

Industrial Relations Amendment (Leave) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Industrial Relations Act 1996* to include in that Act provision with respect to annual and long service leave. The Bill repeals the existing Acts on the subject, namely, the *Annual Holidays Act 1944*, the *Long Service Leave Act 1955* and the *Long Service Leave (Metalliferous Mining Industry) Act 1963*. The consolidated leave provisions are rewritten in modern form. The principal changes include the following:

- (a) at least one week of annual leave may, with the approval of the employer, be taken in single days,
- (b) annual leave may be postponed for at least one year by the employee and, with the agreement of the employer, for a further year (instead of being required to be taken within 6 months or such longer period as the Industrial Registrar permits),
- (c) the right of an employee to payment in advance for annual leave will only apply if the employee requests payment in advance (if such a request is not made, payment is to be made in accordance with the employee's ordinary pay cycle),
- (d) the ordinary rate of pay for annual leave purposes will be calculated for part-time and other employees over the previous period of 12 months or as at the taking of leave (whichever is the greater) instead of being calculated only as at the taking of leave,
- (e) the removal of the requirement that the pro rata entitlement to long service leave after 5 years is only available if at least 5 years of that service was service as an adult,
- (f) the application of the civil penalty enforcement provisions of the Principal Act with respect to breaches of industrial instruments to the leave provisions being inserted into that Act.

The Bill continues the effect of the *Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000* relating to the exclusion of bonuses from the calculation of the ordinary rate of pay for leave purposes if the employee's ordinary annual remuneration (but for the bonus) exceeds an amount prescribed by the regulations.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Industrial Relations Act 1996* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

Clause 5 repeals the *Annual Holidays Act 1944*, the *Long Service Leave Act 1955*, the *Long Service Leave (Metalliferous Mining Industry) Act 1963* and the *Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000*.

Schedule 1 [1] inserts a new Part 4A into Chapter 2 of the *Industrial Relations Act 1996* to deal with annual and long service leave.

Division 1 of the new Part contains preliminary matters, namely:

- (a) the application of the Part to all employees, including part-time employees but not including casual employees, and
- (b) definitions for the purposes of the Part.

Division 2 of the new Part deals with annual leave entitlements. The Division continues the basic entitlement of 4 weeks of paid leave for each year of service. The Division makes provision with respect to:

- (a) the periods of accrued annual leave that may be taken at any time (including the new

- provision for the taking of up to 5 separate days of leave), and
- (b) the time within which annual leave may be taken, namely, annual leave may be postponed for at least one year by the employee and, with the agreement of the employer, for a further year (instead of being required to be taken within 6 months or such longer period as the Industrial Registrar permits), and
- (c) the right of an employee to payment in advance for annual leave on request (if such a request is not made, payment is to be made in accordance with the employee's ordinary pay cycle), and
- (d) the need for 1 month's notice to be given to an employee if the employer requires the employee to take annual leave at a particular time, and
- (e) ensuring that public and special holidays during annual leave are in addition to the period of annual leave to which the employee is entitled, and
- (f) requiring a cash payment to be made to the employee or his or her estate for accrued annual leave that is untaken at the time of the employee's termination of employment, and
- (g) enabling an employer to arrange for an annual close-down of any part of the employer's establishment and requiring employees to take unpaid leave during that period if they have insufficient annual leave.

Division 3 of the new Part deals with long service leave entitlements. The Division continues the basic entitlement (except for those employed in metalliferous mines) of 2 months of leave for 10 years of service and, in addition, one month of leave for each further 5 years of service. In the case of employment in metalliferous mines, the Division continues the basic entitlement of 3 months of leave for 10 years of service and, in addition, 3 months of leave for each further 10 years of service. In the case of the termination of employment of any employee with more than 5 years of service (but not at least 10 years of service) the Division continues the right to a pro rata payment for a proportionate amount of leave that would have accrued after 10 years of service, but with the removal of the existing requirement that the minimum 5 years of service must be service as an adult. The Division makes provision with respect to:

- (a) the periods of accrued long service leave that may be taken at any time, and
- (b) payment during long service leave (including payment in advance), and
- (c) the need for 1 month's notice to be given to an employee if the employer requires the employee to take long service leave at a particular time, and
- (d) ensuring that annual leave and public and special holidays during long service leave are in addition to the period of long service leave to which the employee is entitled, and
- (e) requiring a cash payment to be made to the employee or his or her estate for accrued long service leave that is untaken at the time of the employee's termination of employment.

Division 4 of the new Part makes provision for the purposes of determining the ordinary rate of pay of an employee for the purposes of payment of annual or long service leave under the Part. The ordinary rate of pay is generally calculated at the time leave is taken or employment terminated. The ordinary rate of pay is the sum of the ordinary remuneration of the employee and the amount of bonuses received by the employee (subject to the limit on the inclusion of bonuses mentioned above). The Division continues (in a simplified form) the existing provisions with respect to the calculation of ordinary remuneration. In addition, the ordinary rate of pay for annual leave purposes will be calculated for part-time and other employees over the previous period of 12 months or as at the taking of leave (whichever is the greater) instead of being calculated only as at the taking of leave.

Division 5 of the new Part contains miscellaneous provisions relating to annual and long service leave, including:

- (a) provision with respect to continuity of service, in particular, provision that makes it clear that continuity of service is not interrupted by periods of authorised leave or absence, part-time work or breaks in employment relating to industrial disputes, slackness of trade or other short breaks not exceeding 2 months, and
- (b) provision that ensures that certain periods of absence count as service, including authorised absences, periods of annual or long service leave and absences for the purposes of participating in volunteer emergency services or the Defence Force Reserves,

and

- (c) provisions that preserve continuity of service where employees transfer employment to a related corporation, and
- (d) provision to make it clear that the annual and long service entitlements under the new Part are minimum entitlements, and
- (e) the application to the new Part of the provisions of the Principal Act relating to proceedings for breaches of industrial instruments and the recovery of money under industrial instruments.

Schedule 1 [2] makes a consequential amendment.

Schedule 1 [3] authorises the making of regulations of a savings and transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [4] enacts specific savings and transitional provisions.

Schedule 1 [5] makes a consequential amendment to the Dictionary of defined terms and expressions.

Schedule 2 contains consequential amendments to other Acts.