



New South Wales

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.



New South Wales

Industrial Relations Amendment (Leave) Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Industrial Relations Act 1996 No 17	2
4 Consequential amendment of other Acts	2
5 Repeal of Acts	2
Schedules	
1 Amendments	3
2 Consequential amendment of other Acts	20



New South Wales

Industrial Relations Amendment (Leave) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Industrial Relations Act 1996* to make provision for annual and long service leave; to repeal the *Annual Holidays Act 1944*, the *Long Service Leave Act 1955* and the *Long Service Leave (Metalliferous Mining Industry) Act 1963*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Leave) Act 2000</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Industrial Relations Act 1996 No 17	7
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	8
4 Consequential amendment of other Acts	9
Each Act specified in Schedule 2 is amended as set out in that Schedule.	10 11
5 Repeal of Acts	12
The following Acts are repealed:	13
<i>Annual Holidays Act 1944</i>	14
<i>Long Service Leave Act 1955</i>	15
<i>Long Service Leave (Metalliferous Mining Industry) Act 1963</i>	16
<i>Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000</i>	17

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Chapter 2, Part 4A	3
	Insert after Part 4 of Chapter 2:	4
	Part 4A Annual and long service leave	5
	Division 1 Preliminary	6
	72A Employees to whom Part applies	7
	This Part applies to all employees, including part-time employees, but not including casual employees.	8 9
	72B Definitions	10
	In this Part:	11
	<i>annual leave</i> means leave under Division 2.	12
	<i>long service leave</i> means leave under Division 3.	13
	<i>ordinary rate of pay</i> has the meaning given by Division 4.	14
	<i>week</i> , in relation to an employee, means the employee's ordinary working week.	15 16
	Division 2 Annual leave	17
	72C Entitlement to paid annual leave	18
	(1) An employee is entitled to 4 weeks of paid annual leave for each year of continuous service with the same employer.	19 20
	(2) Annual leave for a year of service does not accrue until the end of that year.	21 22
	(3) Annual leave is to be paid at the employee's ordinary rate of pay.	23 24
	(4) The entitlement to annual leave is subject to the other provisions of this Part.	25 26

72D	Taking of annual leave	1
(1)	Annual leave may only be taken in any year:	2
(a)	in one consecutive period, or	3
(b)	if the employer and employee agree—in any 2, 3 or 4 separate periods, or	4 5
(c)	if the employer and employee agree—in a maximum of 5 separate days and the balance in 1, 2 or 3 separate periods.	6 7 8
(2)	If the employer and the employee agree, any period of annual leave may be taken wholly or partly in advance of the employee becoming entitled to the leave. In that case, the entitlement to further annual leave does not begin to accrue until after the end of the year of employment in respect of which the annual leave was taken.	9 10 11 12 13 14
(3)	Annual leave is to be taken:	15
(a)	within one year after the employee becomes entitled to the leave, or	16 17
(b)	if the employer and employee agree—within 2 years after the employee becomes entitled to the leave.	18 19
72E	Time of payment for annual leave taken	20
(1)	The employer is required to pay an employee in advance for each period of annual leave taken by the employee if the employee requests payment in advance before proceeding on leave.	21 22 23 24
(2)	If payment is not made in advance, payment for annual leave is to be made in accordance with the normal cycle of payment of the employee.	25 26 27
(3)	However, payment in advance cannot be requested for any period of annual leave that is less than one week.	28 29
72F	Notice by employer that employee take leave	30
	An employer cannot require an employee to take annual leave at a particular time unless the employer gives the employee at least one month's notice of the date from which the employee is required to take that leave.	31 32 33 34

72G	Public or special holidays during annual leave	1
(1)	If a public or special holiday for which an employee is entitled to be paid occurs during a period of annual leave taken by the employee under this Part, the period of leave is increased by a day in respect of that holiday.	2 3 4 5
(2)	A public or special holiday is any day (or part of a day) that is:	6
(a)	a public holiday throughout the State or in that part of the State in which the employee works, or	7 8
(b)	a special holiday to which the employee is entitled under a State industrial instrument or by law.	9 10
72H	Payment instead of annual leave	11
	Payment is not to be made by an employer to an employee instead of any annual leave to which the employee is entitled under this Part, except as provided by this Part or by law.	12 13 14
72I	Payment for annual leave untaken on termination of employment	15
(1)	This section applies where the employment of an employee with an employer ceases, including by death (referred to in this section as the <i>termination of employment</i>).	16 17 18
(2)	On termination of employment, an employee who is entitled to annual leave that has not been taken is entitled to be paid by the employer the amount of the employee's ordinary rate of pay for the period of that leave.	19 20 21 22
(3)	If the termination of employment is caused by death, the amount otherwise payable under this section to the employee is payable to the legal personal representative of the employee if that representative requests the employer to make the payment.	23 24 25 26 27
(4)	This section applies to annual leave whether or not the employee continues to be entitled (apart from this section) to take it and so applies as if the employee's right to take the leave had accrued immediately before the date of the termination of employment.	28 29 30 31 32

(5) This subsection applies where an employee has been employed for a period before termination of employment (being a period of less than one year) in respect of which no annual leave has accrued under this Part. The employee is entitled to be paid by the employer an additional amount of one-twelfth of the amount of the employee's ordinary rate of pay for that period of service.	1 2 3 4 5 6 7
(6) Subsection (4) does not apply if the employee has taken annual leave in advance of its accrual and the amount paid by the employer in respect of that leave exceeds the amount required to be paid under subsection (4). The amount of the excess may be deducted from any other remuneration payable to the employee by the employer.	8 9 10 11 12 13
72J Annual close-down	14
(1) For the purposes of this section, an <i>annual close-down</i> is an annual temporary closure of all or any part of an employer's establishment for the purpose of all or some of the employees taking their annual leave at the same time.	15 16 17 18
(2) An employer may require employees to take their accrued annual leave during an annual close-down.	19 20
(3) If an employee does not have any or sufficient annual leave for that purpose, the employer may require the employee to take leave without pay.	21 22 23
(4) An employee cannot be required to take leave under this section unless the employee is given at least one month's notice of the date from which the employee is required to take that leave.	24 25 26 27
Division 3 Long service leave	28
72K Entitlement to paid long service leave	29
(1) An employee is entitled to paid long service leave in accordance with this Part in respect of service with the same employer.	30 31 32
(2) Long service leave is to be paid at the employee's ordinary rate of pay.	33 34

	(3) The entitlement to long service leave is subject to the other provisions of this Part.	1 2
72L	Amount of long service leave (except employment in metalliferous mines)	3 4
	(1) Application	5
	This section applies to all employees other than those to whom section 72M applies.	6 7
	(2) Employee with at least 10 years' service	8
	An employee with at least 10 years of continuous service with an employer is entitled to:	9 10
	(a) 2 months of long service leave for 10 years of service, and	11 12
	(b) in addition, one month of long service leave for each 5 years of service after that initial 10 years of service.	13 14
	(3) Employee with a fraction of 5 years' service	15
	An employee is, in addition, entitled to a proportionate amount of long service leave for any period of continuous service with an employer that is less than 5 years after the employee last became entitled to long service leave and before ceasing for any reason to be employed by the employer. The proportionate amount of leave is to be calculated at the rate of one month for 5 years of service.	16 17 18 19 20 21 22
	(4) Employee with at least 5 years' (but less than 10 years') total service	23 24
	An employee with at least 5 years of continuous service (but less than 10 years of continuous service) with an employer is entitled to a proportionate amount of long service leave for that period of service if:	25 26 27 28
	(a) the employee's services were terminated by the employer for any reason other than the employee's serious and wilful misconduct, or	29 30 31
	(b) the employee ceased employment because of illness, incapacity, or domestic or other pressing necessity, or	32 33
	(c) the employment ceased because of the death of the employee.	34 35
	The proportionate amount of leave is to be calculated at the rate of one month for 5 years of service.	36 37

(5) Meaning of “month”	1
For the purposes of this Division, a month of service of an employee is the period of 4 1/3 weeks.	2 3
72M Amount of long service leave (employment in metalliferous mines)	4 5
(1) Application	6
This section applies to employees who work in, at or about mines (within the meaning of the <i>Mines Inspection Act 1901</i>).	7 8
(2) Employee with at least 10 years’ service	9
An employee with at least 10 years of continuous service with an employer is entitled to:	10 11
(a) 3 months of long service leave for 10 years of service, and	12 13
(b) in addition, 3 months of long service leave for each 10 years of service after that initial 10 years of service.	14 15
(3) Employee with a fraction of 10 years’ service	16
An employee is, in addition, entitled to a proportionate amount of long service leave for any period of continuous service with an employer that is less than 10 years after the employee last became entitled to long service leave and before ceasing for any reason to be employed by the employer. The proportionate amount of leave is to be calculated at the rate of 3 months for 10 years of service.	17 18 19 20 21 22 23
(4) Employee with at least 5 years’ (but less than 10 years’) total service	24 25
An employee with at least 5 years of continuous service (but less than 10 years of continuous service) with an employer is entitled to a proportionate amount of long service leave for that period of service if:	26 27 28 29
(a) the employee’s services were terminated by the employer for any reason other than the employee’s serious and wilful misconduct, or	30 31 32
(b) the employee ceased employment because of illness, incapacity, or domestic or other pressing necessity, or	33 34

(c)	the employment ceased because of the death of the employee.	1 2
	The proportionate amount of leave is to be calculated at the rate of 3 months for 10 years of service.	3 4
72N	Taking of long service leave	5
(1)	Long service leave is to be taken:	6
(a)	as soon as practicable after the employee becomes entitled to it, having regard to the needs of the employer's undertaking, or	7 8 9
(b)	on a later date agreed by the employer and the employee.	10 11
(2)	Any period of long service leave to which an employee becomes entitled may only be taken:	12 13
(a)	in one consecutive period, or	14
(b)	if the employer and employee agree—in separate periods of at least one week each.	15 16
	This subsection does not apply to any leave taken in advance under this section.	17 18
(3)	If the employer and the employee agree, a period of long service leave of not less than one month may be taken wholly or partly in advance of the employee becoming entitled to the leave. In that case, the period of leave is not service for the purpose of accrual of leave under this Division.	19 20 21 22 23
72O	Time of payment of long service leave taken	24
(1)	The employer is required to pay an employee in advance for each period of long service leave taken by the employee if the employee requests payment in advance before proceeding on leave.	25 26 27 28
(2)	If payment is not made in advance, payment for annual leave is to be made in accordance with the normal cycle of payment of the employee or in such other manner agreed by the employer and employee.	29 30 31 32

72P	Notice by employer that employee take leave	1
	An employer cannot require an employee to take long service leave at a particular time unless the employer gives the employee at least one month's notice of the date from which the employee is required to take that leave.	2 3 4 5
72Q	Annual and other holidays during long service leave	6
	(1) The period of long service leave to which an employee is entitled under this Part is exclusive of annual leave taken by the employee during the period of long service leave.	7 8 9
	(2) If a public or special holiday for which an employee is entitled to be paid occurs during a period of long service leave taken by the employee under this Part, the period of leave is increased by a day in respect of that holiday.	10 11 12 13
	(3) A public or special holiday is any day (or part of a day) that is:	14
	(a) a public holiday throughout the State or in that part of the State in which the employee works, or	15 16
	(b) a special holiday to which the employee is entitled under a State industrial instrument or by law.	17 18
72R	Payment instead of long service leave	19
	Payment is not to be made by the employer to an employee instead of any long service leave to which the employee is entitled under this Part, except as provided by this Part or by law.	20 21 22 23
72S	Payment for long service leave untaken on termination of employment	24 25
	(1) This section applies where the employment of an employee with an employer ceases, including by death (referred to in this section as the <i>termination of employment</i>).	26 27 28
	(2) On termination of employment, an employee who is entitled to long service leave that has not been taken is entitled to be paid by the employer the amount of the employee's ordinary rate of pay for the period of that leave.	29 30 31 32

(3) If the termination of employment is caused by death, the amount otherwise payable under this section to the employee is payable to the legal personal representative of the employee if that representative requests the employer to make the payment.	1 2 3 4 5
(4) If the employee has taken long service leave in advance of its accrual and the employment is terminated before that leave accrues, the employer may deduct the amount paid as ordinary pay for that leave from any remuneration payable to the employee on that termination.	6 7 8 9 10
Division 4 Ordinary rate of pay for purposes of leave provisions	11 12
72T Operation of Division	13
This Division applies for the purposes of determining the ordinary rate of pay of an employee for the purposes of annual leave and long service leave under this Part.	14 15 16
72U Weekly rate	17
An employee's ordinary rate of pay is to be determined on a weekly basis.	18 19
72V Relevant date for calculation of ordinary rate of pay	20
(1) The <i>relevant date</i> for the purposes of calculating the ordinary rate of pay of an employee is the date immediately preceding:	21 22
(a) the date on which the employee begins annual leave or long service leave, or	23 24
(b) in the case of payment instead of leave, the date of the employee's termination of employment.	25 26
(2) However, the employer and employee may agree that the relevant date for any annual leave or long service leave that has accrued to the employee is the date of an agreement between them to postpone the taking of leave to a later date.	27 28 29 30

72W	Amounts included in ordinary rate of pay	1
	The ordinary rate of pay of an employee comprises (subject to this Division) the sum of the following:	2
	(a) the ordinary remuneration of the employee,	3
	(b) the amount of bonuses received by the employee.	4
72X	Ordinary remuneration: interpretation	6
	(1) The ordinary remuneration of an employee is the remuneration for the employee's normal weekly number of hours of work calculated at the ordinary time rate of pay fixed by the employee's conditions of employment (or, if there are 2 or more time rates of pay so fixed, the higher or highest rate), less any amount payable to the employee in respect of shift work, overtime or other penalty rates.	7
	(2) If the employee is, on the relevant date, not remunerated wholly in relation to such an ordinary time rate of pay, the ordinary remuneration of the employee is the amount of the average weekly pay earned by the employee under the employee's conditions of employment during the period actually worked by the employee, less any amount payable to the employee in respect of shift work, overtime or other penalty rates.	8
	(3) If the employee's conditions of employment do not fix the normal weekly number of hours of work, the employee's normal weekly number of hours of work, for the purposes of subsection (1), is taken to be the average weekly number of hours worked by the employee:	9
	(a) during the period of 12 months ending on the prescribed date (unless paragraph (b) applies), or	10
	(b) if the employee's ordinary remuneration is averaged over a longer period under this Division—during that longer period.	11
		12
		13
		14
		15
		16
		17
		18
		19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30
72Y	Ordinary remuneration: period for calculation for annual leave	31
	(1) This section applies for the purposes of annual leave only, and applies to both full-time and part-time employees.	32
		33

(2) The amount of the ordinary remuneration of an employee who is, on the relevant date, remunerated wholly in relation to a time rate of pay fixed by the employee's conditions of employment is whichever of the following is the greater:	1 2 3 4
(a) the amount of the ordinary remuneration on the relevant date,	5 6
(b) the average weekly amount of ordinary remuneration earned by the employee during that part of the period of 12 months ending on the relevant date during which the employee was so remunerated.	7 8 9 10
(3) The amount of the ordinary remuneration of an employee who is, on the relevant date, not so remunerated is the average weekly amount of ordinary remuneration earned by the employee during the period of 12 months ending on the relevant date.	11 12 13 14 15
72Z Ordinary remuneration: period for calculation for long service leave	16 17
(1) This section applies for the purposes of long service leave only, and applies to both full-time and part-time employees.	18 19
(2) The amount of the ordinary remuneration of an employee who is, on the relevant date, remunerated wholly in relation to a time rate of pay fixed by the employee's conditions of employment is whichever of the following is the greater:	20 21 22 23
(a) the amount of the ordinary remuneration on the relevant date,	24 25
(b) the average weekly amount of ordinary remuneration earned by the employee during that part of the period of 5 years ending on the relevant date during which the employee was so remunerated.	26 27 28 29
(3) The amount of the ordinary remuneration of an employee who is, on the relevant date, not so remunerated is whichever of the following is the greater:	30 31 32
(a) the average weekly amount of ordinary remuneration earned by the employee during the period of 12 months ending on the relevant date,	33 34 35

- (b) the average weekly amount of remuneration earned by the employee during the period of 5 years ending on the relevant date. 1
2
3

72ZA Bonuses 4

- (1) The bonuses of an employee are any amounts received by the employee in his or her capacity as an employee under the employee's conditions of employment under any bonus, incentive or other similar scheme, other than an amount included in the ordinary remuneration of the employee. 5
6
7
8
9
- (2) The weekly amount of the bonuses of an employee is: 10
 - (a) the average weekly amount of bonuses received by the employee during the period of 12 months ending on the relevant date, or 11
12
13
 - (b) if the ordinary remuneration of the employee is averaged over a longer period under section 72Z (2) (b) or (3) (b)—the average weekly amount of bonuses received by the employee during that longer period. 14
15
16
17
- (3) The bonuses of an employee are not to be taken into account for the purposes of calculating the ordinary rate of pay if the annual amount of the ordinary remuneration of the employee on the relevant date exceeds the amount prescribed by the regulations for the purposes of this subsection. 18
19
20
21
22

Note. Ordinary remuneration does not include bonuses—see section 72X. 23

Division 5 Miscellaneous 24

72ZB Continuity of service for the purposes of leave 25

- (1) This section applies for the purpose of determining whether the service of an employee with an employer is continuous in connection with the entitlement to leave under this Part. 26
27
28
- (2) Continuous service is service under one or more unbroken contracts of employment, including: 29
 - (a) any period of authorised leave or absence, and 30
31
 - (b) any period of part-time work. 32

(3)	Service with an employer is continuous despite any of the following:	1
		2
(a)	a break in employment arising, directly or indirectly, from an industrial dispute,	3
		4
(b)	a temporary break in employment made by the employer because of slackness of trade,	5
		6
(c)	any other break in employment made by the employer that does not exceed 2 months.	7
		8
	The period of any such break in employment is not to be taken into account as service with the employer for the purpose of the accrual of leave under this Part.	9
		10
		11
	Note. See Part 8 for the purposes of determining an employee's entitlement to leave under this Part when the employee is employed by another employer as a result of the transfer of business to that other employer.	12
		13
		14
		15
72ZC	Periods of absence qualifying as service for purposes of accrual of leave	16
		17
(1)	This section applies for the purpose of determining whether a period of absence of an employee is to be taken into account as service with an employer for the purpose of the accrual of leave under this Part.	18
		19
		20
		21
(2)	Any of the following periods of absence of an employee is to be taken into account as service with the employer:	22
		23
(a)	a period of annual leave or long service leave under this Part,	24
		25
(b)	a period of authorised leave or absence, unless this or any other Act or any industrial instrument otherwise provides,	26
		27
		28
(c)	a period of absence for the purpose of the employee participating in volunteer emergency services,	29
		30
(d)	a period of leave for the purpose of the employee participating in the Defence Force Reserves.	31
		32

72ZD	Transfer of employment between related corporations	1
(1)	This section applies for the purposes of determining an employee's entitlements under this Part on the transfer of employment from a corporation to a related corporation (within the meaning of the <i>Corporations Law</i>).	2 3 4 5
(2)	If an employee transfers employment from a corporation to a related corporation:	6 7
(a)	the employee's continuity of service is taken not to have been broken by the transfer of employment, and	8 9
(b)	the period of the employee's service with the first corporation is taken to be service of the employee with the related corporation, and	10 11 12
(c)	the employee is not entitled under this Part to payment for untaken leave on termination of employment with the first corporation.	13 14 15
(3)	This section applies even if there is a break (not exceeding 2 months) before the employee is re-employed by the related corporation. In that case, the transfer of employment is taken to have occurred on the cessation of employment with the first corporation.	16 17 18 19 20
(4)	This section does not entitle an employee to claim a benefit from more than one employer in respect of the same period of service.	21 22 23
72ZE	Termination of employment for the purposes of avoiding this Part	24 25
	If the employment of a person is terminated and the person is subsequently re-employed by the same employer or a related corporation (within the meaning of the <i>Corporations Law</i>), the termination is to be disregarded for the purposes of this Part if the circumstances of the termination and employment indicate an intention to avoid the operation of this Part.	26 27 28 29 30 31
72ZF	This Part provides minimum entitlements	32
(1)	This Part sets out the minimum entitlements of employees to annual leave and long service leave.	33 34

	(2) The provisions of an industrial instrument, contract of employment or other agreement (whether made or entered into before or after the commencement of this Part) do not have effect to the extent that they provide an employee with a benefit that is less favourable to the employee than the benefit to which the employee is entitled under this Part.	1 2 3 4 5 6
	(3) The Commission (or an industrial court hearing a matter under Chapter 7) may determine whether a benefit under any such instrument, contract or other agreement is more or less favourable than the benefit to which an employee is entitled under this Part.	7 8 9 10 11
72ZG	Breach of this Part and recovery of money payable under this Part	12 13
	(1) Part 1 of Chapter 7 (Breach of industrial instruments) applies to any contravention by an employer of any obligation to provide leave or make a payment under this Part.	14 15 16
	(2) Part 2 of Chapter 7 (Recovery of remuneration and other amounts) applies to recovery of an amount payable to an employee (or to the legal personal representative of the employee) under this Part.	17 18 19 20
	(3) For the purposes of this section, a reference in Part 1 or 2 of Chapter 7 and in section 197 to an industrial instrument is to be construed as including a reference to the provisions of this Part.	21 22 23
72ZH	Special provisions with respect to building and construction workers	24 25
	(1) In this section, <i>registered worker</i> and <i>building and construction work</i> have the same meanings they have in the <i>Building and Construction Industry Long Service Payments Act 1986</i> .	26 27 28 29
	(2) Long service leave is not to be granted to a registered worker under this Part, and a payment is not to be made to a registered worker under this Part in respect of untaken long service leave, unless the worker requests the employer to do so.	30 31 32 33

(3) An employer must notify the Building and Construction Industry Long Service Payments Corporation before the employer makes a payment under this Part in connection with long service leave to or in respect of an employee who is (or was) employed in building and construction work.	1 2 3 4 5
[2] Section 364 Definitions	6
Omit section 364 (2). Insert instead:	7
(2) In this Part, a reference to an industrial instrument and to an amount payable under the industrial instrument includes a reference to a permit under section 125 and the amount that may be paid to an employee in accordance with the permit.	8 9 10 11
Note. See also section 72ZG for application of this Part to recovery of amounts payable in respect of annual or long service leave.	12 13
[3] Schedule 4 Savings, transitional and other provisions	14
Insert at the end of clause 2 (1):	15
<i>Industrial Relations Amendment (Leave) Act 2000</i>	16
[4] Schedule 4, Part 2, Division 3A	17
Insert after Division 3:	18
Division 3A Annual and long service leave	19
13B Definitions	20
In this Division:	21
<i>amending Act</i> means the <i>Industrial Relations Amendment (Leave) Act 2000</i> .	22 23
<i>former Act</i> means the <i>Annual Holidays Act 1944</i> , the <i>Long Service Leave Act 1955</i> , or the <i>Long Service Leave (Metalliferous Mining Industry) Act 1963</i> .	24 25 26
13C Leave for existing or past employees	27
Part 4A of this Act (as inserted by the amending Act) extends to:	28 29
(a) persons employed on or before the commencement of that Part, and	30 31

(b)	service with an employer before that commencement, and	1 2
(c)	leave accrued at that commencement under the former Acts.	3 4
13D	Special provision with respect to bonuses	5
	The repeal of the <i>Industrial Relations Leave Legislation Amendment (Bonuses) Act 2000</i> does not affect the operation of section 4 of that Act in connection with entitlements to payments arising under the former Acts before their repeal.	6 7 8 9
[5]	Dictionary	10
	Omit the following from the definition of <i>industrial relations legislation</i> :	11
	<i>Annual Holidays Act 1944</i>	12
	<i>Long Service Leave Act 1955</i>	13
	<i>Long Service Leave (Metalliferous Mining Industry) Act 1963</i>	14

Schedule 2	Consequential amendment of other Acts	1
	(Section 4)	2
2.1	Building and Construction Industry Long Service Payments Act 1986 No 19	3 4
[1]	Section 30A Long service leave	5
	Omit “the <i>Long Service Leave Act 1955</i> ” from section 30A (2).	6
	Insert instead “Part 4A of Chapter 2 of the <i>Industrial Relations Act 1996</i> ”.	7
[2]	Section 30A (3)	8
	Omit the subsection.	9
[3]	Section 31 Benefits under other laws	10
	Omit “the <i>Long Service Leave Act 1955</i> ” from section 31 (7) (a).	11
	Insert instead “Part 4A of Chapter 2 of the <i>Industrial Relations Act 1996</i> ”.	12
[4]	Section 31 (7) (b)	13
	Omit “a scheme in respect of which an exemption has been granted under section 5 (2) (a) of that Act or”.	14 15
	Insert instead “an alternative long service leave scheme that is approved by the Industrial Relations Commission under that Part or that is approved”.	16 17
[5]	Section 31 (7) (b)	18
	Omit “that paragraph”. Insert instead “that Part”.	19

2.2	Police Service Act 1990 No 47	1
	Section 46 Monetary remuneration and employment benefits for executive officers	2 3
	Omit “the <i>Annual Holidays Act 1944</i> ” from section 46 (7).	4
	Insert instead “Part 4A of Chapter 2 of the <i>Industrial Relations Act 1996</i> ”.	5
2.3	Public Sector Management Act 1988 No 33	6
[1]	Section 42L	7
	Omit “the <i>Annual Holidays Act 1944</i> ” from section 42L (7).	8
	Insert instead “Part 4A of Chapter 2 of the <i>Industrial Relations Act 1996</i> ”.	9
[2]	Schedule 5 Extended leave for officers etc of Public Service	10
	Omit “as an adult” from clause 1 (4) where firstly occurring.	11
[3]	Schedule 5, clause 1 (4) (d)	12
	Omit “(that service to include service as an adult and otherwise than as an adult)”.	13 14
[4]	Schedule 5, clause 1 (5)	15
	Omit the subclause.	16
2.4	Teaching Services Act 1980 No 23	17
[1]	Section 79 Leave of absence after years of service	18
	Omit “as an adult” from section 79 (3) where firstly occurring.	19

Industrial Relations Amendment (Leave) Bill 2000

Schedule 2 Consequential amendment of other Acts

[2] Section 79 (3)	1
Omit “(that service to include service as an adult and otherwise than as an adult)”.	2 3
[3] Section 79 (4)	4
Omit the subsection.	5