

CLAUSE NOTES

Long Service Leave Amendment Bill 2011

Clause 1: Short Title

This clause provides that the short title of the amending legislation is the *Long Service Leave Amendment Act 2011*.

Clause 2: Commencement

Under this clause, the Bill is to commence on the 1 July 2012. The proposed amendments will take effect on that day.

Clause 3: Principal Act

This clause provides that the Principal Act referred to in the Bill is the *Long Service Leave Act 1976*. The Bill is making amendments to that Act.

Clause 4: Section 8 amended (Period of long service leave to which employees, other than mining employees, are entitled)

This is the key clause in the Bill. This clause amends the long service leave entitlements provided in section 8 of the Act. The Act currently provides that employees are entitled to:

- 13 weeks of long service leave on completion of 15 years' of continuous employment; and
- $8\frac{2}{3}$ weeks of long service leave in respect of each additional 10 years of continuous employment.

In general terms, “continuous employment” is uninterrupted employment with the same employer. However, the Act does allow for some interruptions without affecting continuity of employment, for example, the taking of annual or long service leave, maternity leave, standing down for a period not exceeding 6 months on account of slackness of trade, jury duty etc. The Act also deems continuous employment where there has been a transmission of business and the employee has been employed by the new employer within 2 months.

Under this clause, employees will be entitled to:

- $8\frac{2}{3}$ weeks of long service leave on completion of 10 years of continuous employment; and
- $4\frac{1}{3}$ weeks of long service leave in respect of each additional 5 years of continuous employment.

This means that employees will have an initial entitlement to long service leave 5 years earlier than under the current provisions of the Act. The subsequent entitlement to long service leave is also brought forward from entitlement after each additional 10 years to after each additional 5 years. However, the rate of accrual of long service leave remains the same. Under the existing provisions of section 8, 13 weeks leave after 15 years works out as an accrual rate of 0.8667 weeks per year. The accrual rate under the proposed entitlement of $8\frac{2}{3}$ weeks leave after 10 years is also 0.8667 weeks per year.

All of the proposed amendments made by this clause relate to section 8(2) of the Act. Paragraphs (a) – (e) make the principal amendments to section 8(2)(a)(i) and (ii) to enact the new long service leave entitlements. The other proposed amendments simply reflect the proposed new entitlements.

Note – the proposed amendments do not apply to mining employees. Long service leave entitlements for mining employees (employees who are employed in, at or about metalliferous mines) are set out in section 8A of the Act.

Clause 5: Section 9 amended (Payment in lieu of long service leave on death of employee)

Section 9 of the Act provides for the situation where an employee who is entitled to long service leave dies before or whilst taking that leave. Under section 9, the employee's employer is to make a payment to the employee's personal representatives in lieu of long service leave.

Section 9(2) of the Act provides for pro rata payment for:

- any additional period of continuous employment since the deceased employee's last accrual of entitlement or
- continuous employment of 7 or more years but less than 15 years (the first entitlement point).

This clause amends section 9(2) to change any references to 15 years to 10 years, reflecting the proposed new entitlement

periods as per clause 4 (see *clause note in respect of clause 4 above*).

Clause 6: Section 12 amended (How and when long service leave shall be taken)

This clause amends section 12(10) of the Act.

Section 12 sets out how long service leave is to be taken. It provides that leave is to be granted by an employer as soon as practicable after the employee becomes entitled to it having regards to the needs of the employer's establishment.

Section 12(10) provides that an employer is not generally required to grant leave to an employee unless the period of leave the employee is entitled to is equal to or greater than 13 weeks for the first period of entitlement and $8\frac{2}{3}$ weeks for a subsequent period of entitlement. This clause amends section 12(10) to reflect the change in entitlement made by the Bill (*as per clause 4 – see clause note above*), i.e., the period of leave for the first period of entitlement will be $8\frac{2}{3}$ weeks and for subsequent periods of entitlement will be $4\frac{1}{3}$ weeks.

Clause 7: Section 27 inserted (2011 transitional arrangements)

This clause inserts a new provision – section 27 – in relation to the transitional arrangements applying in respect of the Bill. The proposed new section 27 refers to a new Schedule (Schedule 3) which sets out the transitional arrangements in detail (*see the clause note in respect of clause 8 below*).

Clause 8: Schedule 3 inserted (2011 transitional arrangements)

This clause inserts a new Schedule (Schedule 3) which sets out the transitional arrangements relating to the Bill.

From the 1 July 2012 (the commencement date), the new entitlements provided in the Bill of $8\frac{2}{3}$ weeks' long service leave on completion of 10 years of continuous employment and $4\frac{1}{3}$ weeks' long service leave in respect of each additional 5 years of continuous employment will apply to all employees covered by the Act. However, under the transitional arrangements set out in the proposed new Schedule 3, there are differences in when employees will be able to take long service leave depending on their number of years of continuous employment.

The new Schedule 3 includes a number of definitions (*Schedule 3 clause 1*). A key definition is the definition of "2011 transition day" which means day on which the Bill commences – 1 July 2012. This is the key date that the transitional arrangements revolve around.

The transitional arrangements set out in the Schedule have the following effects:

Employees with less than 9 years of continuous employment as at 1 July 2012 (referred to as “new continuing employees” in Schedule 3)

Although not directly affected by the transitional arrangements, these employees have been included in Schedule 3 to remove any doubt or uncertainty.

Employees in this category will have to work the additional years of continuous employment required to reach 10 years of continuous employment (the new initial entitlement period). For example, an employee who commenced employment with his current employer on 1 June 2004 will have just over 8 years of continuous employment on 1 July 2012. On completing an additional 2 years of continuous employment, he will be eligible for long service leave on 1 June 2014.

If an employee’s employment is terminated prior to reaching 10 years, that employee may be entitled to a pro rata long service leave if the requirements in the Act (section 8(3)) are met, that is:

- 7 or more but less than 10 years of continuous employment; and
- Employment terminated for one of the following reasons:
 - termination by the employer for any reason other than serious or wilful misconduct;

- termination on account of the employee reaching the age for retirement;
- termination on account of illness of the employee;
- termination on account of incapacity or domestic or other pressing necessity (of the employee).

Employees with **9 years or more but less than 12 years** of continuous employment as at 1 July 2012 (referred to as “intermediate continuing employees” in Schedule 3)

These employees will not be able to take or be granted long service leave before 1 July 2013 (*Schedule 3 clause 2(2)*) (*note – the 12 month period between the 2011 transition date and 1 July 2013 is referred to as the “2011 transition period” in the Schedule*).

For example, an employee with 11 years of continuous employment as at 1 July 2012 will meet the qualification period for an initial entitlement to long service leave (i.e., $8\frac{2}{3}$ weeks after 10 years), however, under the transitional arrangements, they will have to wait until on or after 1 July 2013 to take their long service leave.

Employees in this category can make an application for long service leave during the 2011 transition period for long service leave that is to be taken after on or after 1 July 2013. For example, an employee could put in an application on 1 May 2013 for long service leave to be taken from 1 July 2013 (*Schedule 3 clause 2(3)*).

It is important to note that the transitional arrangements do not prevent an employee in this category (an intermediate continuing employee) from receiving their entitlements in the event that the employee leaves their employment with the employer for any reason before 1 July 2013 (for example, to go to a better paid job with a different employer). Similarly, if the employee dies whilst still in continuous employment with the employer but prior to 1 July 2013, the employee's personal representatives (estate) will be entitled to a payment in respect of the employee's long service leave entitlement.

Employees with **12 years or more** of continuous employment as at 1 July 2012 (referred to as "long-term continuing employees" in Schedule 3)

These employees will immediately be able to take long service leave, subject to other provisions in the Act*, on and from 1 July 2012 (*Schedule 3 clause 2(1)*) (*Note – under section 12 of the Act, when an employee becomes entitled to long service leave, that leave is to be granted by an employer as soon as practicable having regard to the needs of the employer's establishment. Section 12 also provides that long service leave may be postponed to such date as is agreed upon between the employer and employee, or in default of such agreement, as the Secretary directs).

The entitlement will be to $8\frac{2}{3}$ weeks' long service leave on completion of the first 10 years of continuous employment. There will then be an entitlement to $4\frac{1}{3}$ weeks' long service leave in respect of every additional 5 years of continuous employment, that is, at 15 years, 20 years, 25 years etc.

Schedule 3 clause 2(4) prevents double dipping so that an employee with 15 or more years of continuous employment who has already taken long service leave under the existing provisions of the Act (before the amendments commence) cannot get another lot of long service leave under the new long service leave entitlements for that same period of employment. An employee in that situation will be entitled to another 4½ weeks of long service leave on reaching the next qualification period – 20 years, 25 years etc.

Clause 9: Repeal of Act

This is a standard repeal provision to remove the empty shell of the Bill after all its provisions have been transferred and come into effect in the Principal Act.