

INDUSTRIAL RELATIONS AND ANOTHER ACT AMENDMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Section 58(2) of the *Industrial Relations Act 1999* required a full bench of the Queensland Industrial Relations Commission (QIRC) to review the entitlement to long service leave before 30 June 2000.

On 27 June 2000 the QIRC concluded this review with the release of a written statement that provided support for the following changes and improvements to the current entitlement to long service leave:

- 8.6667 weeks leave after 10 years continuous service, with transitional arrangements to phase in the new entitlement;
- access to a pro-rata payment for long service leave after 7 years service where the employee terminates because of illness, incapacity, or domestic or other pressing necessity (or death), but not where the employee is terminated by the employer for a valid reason related to their conduct, capacity or performance;
- once 10 years continuous service has been worked, whether or not a first or subsequent leave has been taken, all service (stated in years and a fraction of the year if necessary) should be paid for any termination;
- ‘cashing out’ of leave should be permitted after 10 years continuous service;
- the formula for payment of long service leave for casual employees should apply also to part-time employees and employees with a mix of full-time, part-time and casual employment during their continuous service; and
- part-time employees should be entitled to take full-time equivalent long service leave, as is currently the case for casual employees.

The Queensland Government decided to legislate to give effect to the views and conclusions expressed by the QIRC. It has done so on the basis that the outcome of the review should be implemented in its entirety.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Short Title

Clause 1 sets out the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

PART 2—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1999

Act amended in pt 2

Clause 3 provides that this part of the Bill amends the *Industrial Relations Act 1999*.

Amendment of s 43 (Entitlement)

Clause 4 provides for the previous long service leave entitlement of 13 weeks leave after 15 years continuous service to be replaced by a new entitlement of 8.6667 weeks leave after 10 years continuous service.

The clause establishes that an employee is entitled to proportionate payment for long service leave if the employee's service is terminated after completing at least 7 years continuous service. However, if the employee's service is terminated after 7 years continuous service but before the completion of 10 years continuous service, the employee is entitled to a proportionate payment only if certain prescribed conditions are met. The clause outlines these conditions as follows:

- The employee's service is terminated because of the employee's death; or
- The employee terminates the service because of the employee's illness or incapacity, or because of a domestic or other pressing necessity; or
- The employer dismisses the employee for a reason other than the employee's conduct, capacity or performance, or the employer unfairly dismisses the employee (i.e. an employee who is dismissed by the employer between 7 and 10 years continuous service does not have an entitlement to a proportionate payment if dismissed for reasons of conduct, capacity or performance, provided it was not an unfair dismissal. In all other circumstances where an employer dismisses an employee, whether or not it was an unfair dismissal, the employee will be entitled to a proportionate payment).

The clause outlines the transitional arrangements to phase in the new entitlement of 8.6667 weeks after 10 years continuous service. In effect, these arrangements apply to employees whose continuous service began before the commencement date. For the purposes of working out when such an employee may take long service leave, only two thirds of an employee's continuous service completed before the commencement counts as continuous service. However, the entitlement to long service leave that an employee has accrued before the commencement is not reduced.

The clause provides examples of how these transitional arrangements apply.

Amendment of ch 2, pt 3, div 3, heading

Clause 5 alters the heading to reflect the fact that the division makes provision for regular part-time employees, in addition to casual employees.

Amendment of s 48 (Taking long service leave—alternative provision for casual employees)

Clause 6 extends to regular part-time employees the capacity to take long service leave in the form of its full-time equivalent by agreement with their employer. The definition of ‘regular part-time employee’ is in the dictionary at Schedule 5.

Amendment of s 49 (Payment for long service leave)

Clause 7 provides that the manner and method of calculating payment for long service leave under section 49 applies not only to casual employees but to any employee who was a casual or regular part-time employee at any time during the employee’s continuous service to which the long service leave relates.

The formula is adjusted to reflect the new entitlement of 8.6667 weeks leave after 10 years continuous service.

Amendment of s 50 (Entitlement—employees in sugar industry and meat works)

Clause 8 adjusts both the formula and the example in section 50(2) to reflect the new entitlement of 8.6667 weeks leave after 10 years continuous service.

Replacement of s 53 (Payment instead of long service leave on termination)

Clause 9 removes the prohibition on payment instead of long service leave except on termination and provides that if the relevant industrial instrument provides for this to happen, an employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave. Payment may be made, in accordance with the industrial instrument, if the employee and employer agree by a signed agreement.

If no industrial instrument provides for this to happen, payment may be made only if the payment is ordered by the commission on application by the employee. The commission may order a payment only if satisfied the payment should be made on compassionate grounds or on the ground of financial hardship.

The full bench must not make a general ruling under section 287 that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.

Amendment of s 58 (Review of general employment conditions)

Clause 10 omits section 58(2) as the full bench has now fulfilled the requirement placed on it to review the entitlement to long service leave before 30 June 2000.

**PART 3—AMENDMENT OF BUILDING AND
CONSTRUCTION INDUSTRY (PORTABLE LONG
SERVICE LEAVE) ACT 1991**

Act amended in pt 2

Clause 11 provides that this part of the Bill amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Amendment of s 56 (Application for entitlement to long service leave or payment instead of long service leave)

Clause 12 provides for the circumstances in which a worker under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* can be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave. If no building and construction industry award or agreement provides for this to happen, payment may be made only if the worker has accrued 10 years service in the register of workers and the industrial relations commission has ordered the payment under section 53(3) of the *Industrial Relations Act 1999*, as provided for in part 2, clause 9 of the Bill.