

Queensland



**INDUSTRIAL RELATIONS
AND ANOTHER
ACT AMENDMENT BILL 2001**

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2001

A BILL

FOR

***An Act to amend the Industrial Relations Act 1999 and the Building and
Construction Industry (Portable Long Service Leave) Act 1991***

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The Parliament of Queensland enacts— 1

PART 1—PRELIMINARY 2

Clause 1 Short title 3

This Act may be cited as the *Industrial Relations and Another Act Amendment Act 2001*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

**PART 2—AMENDMENT OF INDUSTRIAL RELATIONS
ACT 1999** 8
9

Clause 3 Act amended in pt 2 10

This part amends the *Industrial Relations Act 1999*. 11

Clause 4 Amendment of s 43 (Entitlement) 12

(1) Section 43(2)(a), (2)(b) and (6), definition “**proportionate payment**”, ‘15 years’— 13
14

omit, insert— 15

‘10 years’. 16

(2) Section 43(2)(a), (2)(b) and (6), definition “**proportionate payment**”, ‘13 weeks’— 17
18

omit, insert— 19

‘8.6667 weeks’. 20

(3) Section 43(4), (5) and (6)— 21

renumber as section 43(5), (6) and (9). 22

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(4) Section 43(3)—	1
<i>omit, insert—</i>	2
‘(3) An employee who has completed at least 7 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee’s service.	3 4 5
‘(4) However, if the employee’s service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—	6 7 8
(a) the employee’s service is terminated because of the employee’s death; or	9 10
(b) the employee terminates the service because of—	11
(i) the employee’s illness or incapacity; or	12
(ii) a domestic or other pressing necessity; or	13
(c) the termination is because the employer—	14
(i) dismisses the employee for a reason other than the employee’s conduct, capacity or performance; or	15 16
(ii) unfairly dismisses the employee.’	17
(5) Section 43—	18
<i>insert—</i>	19
‘(7) For the purposes of working out when an employee may take long service leave, only two-thirds of the employee’s continuous service completed before the commencement of this subsection counts as continuous service.	20 21 22 23
‘(8) Subsection (7) does not reduce an entitlement to long service leave that an employee has accrued before subsection (7) commences.	24 25
<i>Examples of subsections (7) and (8)—</i>	26
An employee has completed 15 years continuous service immediately before the commencement. The 15 years counts as 10 years continuous service for working out when the employee may take long service leave. The employee may take the leave immediately. The employee’s entitlement then is 13 weeks (15 x 0.86667 weeks).	27 28 29 30
An employee has completed 10 years continuous service immediately before the commencement. The 10 years counts as 6.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 3.3333 years continuous service. The employee’s entitlement then will be 11.5556 weeks ([10 + 3.3333] x 0.86667 weeks).	31 32 33 34 35
An employee has completed 1 year continuous service immediately before the commencement. The 1 year counts as 0.6667 years continuous service for working out	36 37

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when the employee may take long service leave. The employee may take the leave after completing another 9.3333 years continuous service. The employee's entitlement then will be 8.9556 weeks $([1 + 9.3333] \times 0.86667 \text{ weeks})$.

An employee starts employment after the commencement. The employee may take long service leave after completing 10 years continuous service. The employee's entitlement then will be 8.6667 weeks $(10 \times 0.86667 \text{ weeks})$.

Clause 5	Amendment of ch 2, pt 3, div 3, heading	1 2 3
	Chapter 2, part 3, division 3, heading, after ' <i>Casual</i> '—	8
	<i>insert</i> —	9
	<i>'or regular part-time'</i> .	10
Clause 6	Amendment of s 48 (Taking long service leave—alternative provision for casual employees)	11 12
	(1) Section 48, heading, after ' <i>casual</i> '—	13
	<i>insert</i> —	14
	<i>'or regular part-time'</i> .	15
	(2) Section 48(1), after ' <i>casual</i> '—	16
	<i>insert</i> —	17
	<i>'or regular part-time¹'</i> .	18
Clause 7	Amendment of s 49 (Payment for long service leave)	19
	(1) Section 49(2) to (6)—	20
	<i>renumber</i> as section 49(3) to (7).	21
	(2) Section 49(1)—	22
	<i>omit, insert</i> —	23
	(1) This section applies if an employee who is entitled to long service leave was a casual or regular part-time employee at any time during the employee's continuous service to which the long service leave relates.	24 25 26

1 See the dictionary for the definition "**regular part-time employee**".

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‘(2) The minimum amount payable to the employee for long service leave is worked out using the formula—

$$\frac{\text{actual service}}{52} \times \frac{8.6667}{10} \times \text{hourly rate}$$

Example—

An employee who worked 15 600 ordinary working hours over a 10 year period and is being paid an hourly rate of \$12 is entitled to be paid—

$$\frac{15\,600}{52} \times \frac{8.6667}{10} \times \$12 = \$3\,120.01'.$$

Clause 8 Amendment of s 50 (Entitlement—employees in sugar industry and meat works)

Section 50(2)—

omit, insert—

‘(2) The employee is entitled to long service leave on full pay of at least the number of weeks worked out using the following formula—

$$\text{section 43 entitlement} \times \frac{\text{actual service}}{10}$$

Example—

An employee who worked half of each year, over a 10 year period, is entitled to half the section 43 entitlement, that is, half of 8.6667 weeks leave (8.6667 x $\frac{5}{10}$ = 4.3334).’.

Clause 9 Replacement of s 53 (Payment instead of long service leave on termination)

Section 53—

omit, insert—

‘53 Payment instead of long service leave

‘(1) 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 if subsection (2) or (3) applies.

‘(2) If the relevant industrial instrument provides for the employee to 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

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the industrial instrument, if the employee and employer agree by a signed agreement.	1 2
‘(3) If no industrial instrument provides for the employee to 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 only if the payment is ordered by the commission on application by the employee.	3 4 5 6
‘(4) The commission may order the payment only if satisfied the payment should be made—	7 8
(a) on compassionate grounds; or	9
(b) on the ground of financial hardship.	10
‘(5) Despite section 58(2), the full bench must not make a general ruling that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.	11 12 13
‘(6) In subsection (3)—	14
“employee” includes a registered worker under the <i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i> .	15 16
“entitlement to long service leave” includes an entitlement to long service leave under the <i>Building and Construction Industry (Portable Long Service Leave) Act 1991</i> , section 57(1). ² .	17 18 19
Clause 10 Amendment of s 58 (Review of general employment conditions)	20
(1) Section 58(2)—	21
omit.	22
(2) Section 58(3)—	23
renumber as section 58(2).	24

2 *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57 (Entitlement to long service leave)

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

Clause 11 Act amended in pt 3

This part amends the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

Clause 12 Amendment of s 56 (Application for entitlement to long service leave or payment instead of long service leave)

(1) Section 56(3)—

renumber as section 56(4).

(2) Section 56—

insert—

‘(3) If no building and construction industry award or agreement provides for the worker to be paid all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if—

(a) the worker has accrued 10 years service in the register of workers; and

(b) the industrial relations commission has ordered the payment under the *Industrial Relations Act 1999*, section 53(3).³’