

EXPLANATORY STATEMENT

Long Service Leave (Commonwealth Employees) Regulation 2016

Issued under the Authority of the Minister Assisting the Prime Minister for the Public Service in compliance with section 26 of the *Legislative Instruments Act 2003*

Legislative Authority

Section 26 of the *Long Service Leave (Commonwealth Employees) Act 1976* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Background

The purpose of the *Long Service Leave (Commonwealth Employees) Regulation 2016* (the Regulation) is to repeal and replace the *Long Service Leave (Commonwealth Employees) Regulations 1957* (the 1957 Regulations) which sunset on 1 October 2016. The Regulation largely replicates the 1957 Regulations with minor technical amendments to remove redundant clauses and modernise language and structure.

Purpose and operation

Specific provisions in the Act provide that regulations may be made to support the provision of long service leave entitlements. These include section 4(6)(b); section 4(6)(c)(iii); section 6(1), section 7(1); section 7(2); section 7(3); section 8(1); section 8(2); section 8(3); section 8A; section 9B(1); section 12(10)(b); and section 26.

One additional employer is also being added to Schedule 2 of the Regulations – H.S. Sales and Contracting Pty Ltd. This is to ensure prior service with this employer is recognised for the purpose of calculating an employee's long service leave entitlement.

Consultation

The Department of the Prime Minister and Cabinet consulted interested parties within the Commonwealth including the Australian Public Service Commission and the Department of Finance. The Office of Best Practice Regulation has advised that a regulatory impact statement is not required (OBPR ID 21089).

Statement of Compatibility with Human rights

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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modernise language and structure. One additional employer is also being added to Schedule 2 of the Regulation – H.S. Sales and Contracting Pty Ltd. This is to ensure prior service with this employer is recognised for the purpose of calculating an employee’s long service leave entitlement.

This Disallowable Legislative Instrument engages with Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), particularly part (d). Article 7 is as follows:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

The Regulation maintains provision of Commonwealth employees’ entitlements to long service leave, which supports the realisation of Article 7 for relevant employees. The inclusion of an additional employer (to Schedule 2) enhances the long service leave entitlements of a small number of employees.

Details of the Long Service Leave (Commonwealth Employees) Regulation 2016

Part 1- Preliminary

Section 1: Name

This section provides that the name of the Regulation is the *Long Service Leave (Commonwealth Employees) Regulation 2016*.

Section 2: Commencement

This section provides that the instrument commences the day after this instrument is registered.

Section 3: Authority

The Regulation is made under the *Long Service Leave (Commonwealth Employees) Act 1976*.

Section 4: Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5: Definitions

This section defines key terms including that ‘the Act’ means the *Long Service Leave (Commonwealth Employees) Act 1976*.

Part 2 – Period and continuity of service

Section 6: Purpose of this Part

This section prescribes matters relevant to determining whether a person is, or was, employed in Government Service or another qualifying service for the purpose of determining the person’s period and continuity of service; and the period of that employment.

Section 7: Employment etc. by certain bodies

This section provides that for the purposes of subparagraph 4(6)(c)(iii) of the Act, AIDC Limited, ANL Limited and Telstra Corporation Limited are each a body corporate to which paragraph 4(6)(c) of the Act applies.

Section 8: Previous service – State authorities and other prescribed employers

This section provides that a person, authority, institution or body referred to in Schedule 1 is taken to be, or to have been, an authority of a State for the purposes of subsection 7(1) and paragraphs 7(3)(b) and (c) of the Act. Previous employment of an employee in the service of a person, authority, institution or body referred to in Schedule 2 is to be taken into account as

if it had been employment in Government Service for the purposes of subsection 7(2) and paragraphs 7(3)(b) and (c) of the Act.

Section 9: Previous service – principal executive offices

This section provides for previous employment in a principal executive office and employment by a holder of a prescribed principal executive office for the purposes of subsection 7(2) of the Act.

Section 10: Continuity of service – executive office

This section provides for organisations to be recognised as a prescribed office for the purposes of paragraph 12(11)(b) of the Act.

Section 11: Period of service – maritime employees

This section provides for a prescribed class of maritime employees for the purposes of paragraph 15(1)(c), (d) and (e) of the Act.

Part 3 – Allowances included in salary

Section 12: Purpose of this Part

This section sets out the kinds of allowances to be included in salary (for the purposes of section 8 of the Act); and the conditions (if any), or the extent to which, payments under the Act are to include allowances set out in this Part.

Section 13: General allowances

This section outlines the kinds of allowances included in salary.

Section 14: Higher duties allowance

This section provides for the treatment of a higher duties allowance for the purposes of calculating salary.

Section 15: District allowance

This section provides for the treatment of a district allowance for the purposes of calculating salary.

Section 16: Tool allowance

This section provides for the treatment of a tool allowance for the purposes of calculating salary.

Part 4 – Payments not included in salary

Section 17: Purpose of this Part

This section sets out the kinds of payments that are not included in salary (for the purposes of section 8A of the Act); or the extent to which, or the circumstances in which, certain kinds of payments are not included in salary.

Section 18: Shift penalty payments

This section provides that a shift penalty payment is a kind of payment not included in salary.

Section 19: Overtime payments

This section provides that an overtime payment is a kind of payment not included in salary.

Section 20: Restriction, or on-call, allowance

This section provides that a payment in the nature of a restriction, or on-call, allowance is a kind of payment not included in salary.

Part 5 – Transitional, savings and application provisions

Section 21: Repeal of Long Service Leave (Commonwealth Employees) Regulations 1957

This section provides that the repealed 1957 Regulations continue to apply to the extent that a person's entitlement in relation to the grant of long service leave (whether in respect of a period of service, continuity of service or an allowance or another payment) would otherwise be reduced or adversely affected by the repeal.

Schedule 1 – State authorities

For the purposes of subsection 7(1) and paragraphs 7(3)(b) and (c) of the Act, this schedule lists a person, authority, institution or body to be, or to have been, an authority of a State.

Schedule 2 – Previous employment

For the purposes of subsection 7(2) and paragraphs 7(3)(b) and (c) of the Act, this schedule lists a person, authority, institution or body for which previous employment with is to be taken as if it had been employment in Government Service.

Schedule 3 – Repeals

The whole of the 1957 Regulations is to be repealed.