



# Long Service Leave (Commonwealth Employees) Act 1976

No. 192, 1976

## Compilation No. 20

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Long Service Leave (Commonwealth Employees) Act 1976* that shows the text of the law as amended and in force on 30 March 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Contents

1	Short title.....	1
2	Commencement.....	1
4	Interpretation .....	1
5	Application of the Act .....	6
6	Meaning of authority of a State or of the Northern Territory .....	6
7	Regulations with respect to previous service with prescribed authorities etc. ....	7
8	Meaning of salary.....	8
8A	Certain payments not included in salary.....	8
9	Delegation by approving authority .....	8
9B	Delegations by Presiding Officers .....	9
10	Meaning of employment in Government Service .....	10
11	Period of service .....	13
12	Continuity of service .....	14
13	Modifications of sections 11 and 12 in relation to service in the Independent State of Papua New Guinea.....	18
14	Concurrent employment .....	22
15	Award etc. in relation to long service leave for seamen .....	23
16	Long service leave and payments in lieu of long service leave .....	25
17	Extended leave or pay in lieu of leave for employees not entitled to long service leave .....	27
18	Calculation of long service leave credit.....	30
19	Application of section 18.....	31
20	Rate of salary while absent on long service leave .....	33
21	Rate of salary in relation to pay in lieu of leave .....	37
22	Long service leave benefits not to be granted under other laws .....	38
23	Additional provisions relating to death of an employee .....	38
24	Transitional provision.....	39
24A	Commonwealth Teaching Service—transitional .....	41
26	Regulations.....	43

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<b>Endnotes</b>	44
<b>Endnote 1—About the endnotes</b>	44
<b>Endnote 2—Abbreviation key</b>	46
<b>Endnote 3—Legislation history</b>	47
<b>Endnote 4—Amendment history</b>	52
<b>Endnote 5—Miscellaneous</b>	54

# **An Act to make Provision for Long Service Leave in respect of Employees of the Commonwealth and certain other Persons, and for other purposes**

## **1 Short title**

This Act may be cited as the *Long Service Leave (Commonwealth Employees) Act 1976*.

## **2 Commencement**

This Act shall come into operation on the day on which it receives the Royal Assent.

## **4 Interpretation**

(1) In this Act, unless the contrary intention appears:

***ACT enactment*** means an enactment as defined by section 3 of the *Australian Capital Territory (Self-Government) Act 1988*.

***ACT teaching service*** means the service known on 1 November 1988 as the Commonwealth Teaching Service.

***approving authority*** means:

- (a) in relation to a person who is, or was at the time of his or her ceasing to be an employee whether by reason of death or otherwise, employed in the Department of the Senate—the President of the Senate;
- (b) in relation to a person who is, or was at the time of his or her ceasing to be an employee whether by reason of death or otherwise, employed in the Department of the House of Representatives—the Speaker of the House of Representatives;
- (c) in relation to a person who is, or was at the time of his or her ceasing to be an employee whether by reason of death or

otherwise, employed in a Department of the Parliament established under the *Parliamentary Service Act 1999* other than the Department of the Senate and the Department of the House of Representatives—the President of the Senate and the Speaker of the House of Representatives;

- (d) in relation to a person who is, or was at the time of his or her ceasing to be an employee whether by reason of death or otherwise, the holder of an office or appointment, being an office or appointment to which this paragraph applies or applied by virtue of subsection (8)—the person authorized to grant leave to the holder of the office or appointment by the law establishing the office or providing for the making of the appointment; or
- (e) in any other case:
  - (i) the chief executive officer of the employing agency (the **original agency**) in which the person is employed, or in which the person was employed at the time of his or her ceasing to be an employee (whether by reason of death or otherwise); or
  - (ii) if the original agency no longer exists—the chief executive officer (however described) of the replacement agency determined under subsection (1A).

**category A employee** means:

- (a) an employee the whole of whose employment that counts as employment in a qualifying service for the purposes of this Act has been employment in a full-time capacity; or
- (b) an employee the whole of whose employment that counts as employment in a qualifying service for the purposes of this Act has been employment in a part-time capacity.

**category B employee** means an employee other than a category A employee.

**chief executive officer**, in relation to an employing agency, means:

- (a) if the employing agency is an Agency within the meaning of the *Public Service Act 1999*—the Agency Head (within the meaning of that Act); or

- (b) in any other case—the person (however described) who is the chief executive officer of the employing agency.

**employee** means a person who is to be taken, by virtue of section 10, to be employed in Government Service for the purposes of this Act.

**employing agency** means:

- (a) an Agency within the meaning of the *Public Service Act 1999*; or
- (b) a public authority of the Commonwealth; or
- (c) a body covered by paragraph (6)(b); or
- (d) a company covered by paragraph (6)(c).

**leave** means leave of absence.

**long service leave** includes long leave, furlough, extended leave and any other leave in the nature of long service leave (howsoever referred to).

**public authority of the Commonwealth** means an authority established or constituted by or under a law of the Commonwealth or of the Australian Capital Territory, other than an ACT enactment.

**retrenchment**, in relation to an employee, means the compulsory termination of the service of the employee for the reason that:

- (a) his or her service or position is not necessary;
- (b) the work for which he or she was engaged is finished; or
- (c) a reduction in the number of employees is necessary because the quantity of work has diminished.

(1A) If the employing agency (the **original agency**) in which a person was employed at the time of his or her ceasing to be an employee no longer exists at a later time, then the **replacement agency** at that later time is:

- (a) the employing agency that is responsible for the matter to which the person's duties related, or mainly related, at the time of his or her ceasing to be an employee; or

- (b) if there is no employing agency that is responsible for that matter—the employing agency that is nominated in writing by the Secretary of the Department.
- (2) Subject to section 13, a reference in this Act to employment in a qualifying service is a reference to employment in Government Service or in a service referred to in subsection 11(2).
- (3) For the purposes of references in this Act to a number of months (other than a reference to a number of completed months), the number of months shall be taken to be, where appropriate, a whole number and a fraction.
- (4) For the purposes of references in this Act to a number of years (other than a reference to a number of completed years), the number of years shall be taken to be, where appropriate, a whole number and a fraction.
- (5) For the purposes of this Act, a member of the Defence Force shall be deemed to be employed in the Defence Force, and, in the case of a member not engaged on full-time service, shall be deemed to be so employed while he or she is performing his or her duties as such a member.
- (6) A reference in this Act to a person who is employed by, remunerated by, in the service of, on loan to or appointed or engaged by the Commonwealth shall be read as including a reference to a person who is employed by, remunerated by, in the service of, on loan to or appointed or engaged by:
  - (a) a public authority of the Commonwealth;
  - (b) a body (not being a public authority of the Commonwealth) established by or under a law of the Commonwealth or of an internal Territory that is declared by the regulations to be a body to which this subsection applies; or
  - (c) a company that:
    - (i) is incorporated (whether before or after the commencement of this paragraph) under a law of the Commonwealth or a law in force in a State or Territory;



- (ii) is a trading corporation, or a financial corporation, within the meaning of paragraph 51(xx) of the Constitution; and
  - (iii) is declared by the regulations to be a body corporate to which this paragraph applies.
- (7) For the purposes of this Act:
  - (b) a member of the Police Force of the Northern Territory shall be deemed to be employed in the Public Service of that Territory.
- (8) Where:
  - (a) a provision of a law of the Commonwealth or of an internal Territory, other than an ACT enactment authorizes, whether expressly or otherwise, the Governor-General or a Minister to grant leave of absence to the holder of an office established by, or of an appointment made under, that law; and
  - (b) the holder of the office or appointment is, for the purposes of this Act, to be taken to be employed in Government Service by reason of holding the office or appointment;

the office is an office, or the appointment is an appointment, as the case may be, to which paragraph (d) of the definition of **approving authority** in subsection (1) applies.
- (10) For the purposes of this Act, the minimum retiring age of an employee is:
  - (a) in the case of an employee who is an APS employee—the minimum that applies to the employee under section 30 of the *Public Service Act 1999*; or
  - (b) in the case of an employee who is employed by a public authority of the Commonwealth otherwise than in a permanent capacity:
    - (i) if the public authority has, for the purposes of this Act, fixed an age, less than 60 years, as the minimum retiring age in respect of a class of employees in which an employee is included—the age so fixed; or

- (ii) if subparagraph (i) does not apply in relation to the employee—the age of 60 years; or
- (c) in the case of any other employee:
  - (i) if, under the terms and conditions of his or her employment, an age that is less than 60 years of age is fixed as the age upon the attainment of which he or she is required to retire from his or her employment and no other age is fixed as the age upon the attainment of which he or she may retire from his or her employment—the age fixed as the age upon the attainment of which he or she is required to retire from his or her employment;
  - (ii) if, under the terms and conditions of his or her employment, an age that is less than 60 years of age is fixed as the age upon the attainment of which he or she may retire from his or her employment and the age so fixed is less than the age fixed as the age upon the attainment of which he or she is required to retire from his or her employment or no age is fixed as the age upon the attainment of which he or she is required to retire from his or her employment—the age fixed as the age upon the attainment of which he or she may retire from his or her employment; or
  - (iii) if subparagraph (i) or (ii) does not apply in relation to the employee—the age of 60 years.

## **5 Application of the Act**

Where a person is or has been employed in Government Service on or after the commencement of this Act, this Act applies to and in relation to any employment of that person in a qualifying service at any time before or after the commencement of this Act.

## **6 Meaning of authority of a State or of the Northern Territory**

- (1) Subject to regulations made in accordance with section 7, a reference in this Act to an authority of a State shall be read as a reference to:

- (a) an authority, whether incorporated or not, that was or is constituted by or under the law of a State for a public purpose; or
  - (b) a local governing body that was or is established by or under a law of a State.
- (2) This section has effect as if the Australian Capital Territory and the Northern Territory were States.

**7 Regulations with respect to previous service with prescribed authorities etc.**

- (1) The regulations may provide that a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the regulations shall, for the purposes of this Act, be deemed to be, or to have been, an authority of a State.
- (2) The regulations may provide that previous employment of an employee in the service of a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the regulations shall be taken into account for the purposes of section 11 as if it had been employment in Government Service.
- (3) Regulations made in accordance with this section:
- (a) may refer to a specified person, authority, institution or body or to persons, authorities, institutions or bodies included in a specified class of persons, authorities, institutions or bodies;
  - (b) may be expressed to have effect in respect only of employment in specified cases or circumstances; and
  - (c) may be expressed to have effect in respect only of employment on or after a particular date, before a particular date or during a particular period.
- (4) This section has effect as if the Australian Capital Territory and the Northern Territory were States.

## **8 Meaning of salary**

- (1) The regulations may provide that allowances of specified kinds are to be included in salary for the purposes of this Act or of a provision of this Act.
- (2) The regulations may prescribe the conditions subject to which, or specify the extent to which, payments in accordance with this Act, or in accordance with a provision of this Act, are to include amounts by way of, or in respect of, an allowance of a kind specified in the regulations referred to in subsection (1), including conditions having effect after the time at which leave commences.
- (3) In the case of an employee who receives, or of employees included in a class of employees who receive, salary otherwise than by way of uniform amounts in respect of uniform periods, the regulations may provide that an amount ascertained in the manner provided by the regulations is to be the annual salary for the purposes of this Act of the employee or of the employees included in the class of employees.

### **8A Certain payments not included in salary**

The regulations may:

- (a) provide that payments of a specified kind are not included in salary; or
- (b) specify the extent to which payments of a specified kind are not included in salary; or
- (c) prescribe the circumstances in which payments of a specified kind are not included in salary;

for the purposes of this Act or of a provision of this Act.

## **9 Delegation by approving authority**

- (1) An approving authority may, in writing, delegate to another person any of the approving authority's powers or functions under this Act (other than this section).

- (2) A person (the *first delegate*) to whom powers or functions are delegated under subsection (1) may, in writing, delegate any of those powers or functions to another person (the *second delegate*). However, if the first delegate is subject to directions in relation to the exercise of a power or function delegated under this subsection, the first delegate must give corresponding directions to the second delegate.
- (3) A power or function that is exercised or performed by a person under a delegation under subsection (2) is taken, for the purposes of this Act, to have been exercised or performed by the approving authority.
- (4) A person exercising powers or functions under a delegation under this section must comply with any directions of the person who delegated the power or function.
- (5) In this section:  
  
*approving authority* does not include the President of the Senate or the Speaker of the House of Representatives.

### **9B Delegations by Presiding Officers**

- (1) The President or the Speaker or the President and the Speaker, as the case may be, may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her or them, as the case may be, delegate to an officer or employee of the Parliament, any of his or her or their powers, as the case may be, as an approving authority under this Act or under the regulations, other than this power of delegation.
- (2) A power delegated under subsection (1), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the President or the Speaker or the President and the Speaker, as the case may be.
- (3) A delegation under subsection (1) does not prevent the exercise by the President or the Speaker or the President and the Speaker, as the case may be, of the power to which the delegation relates.

- (4) The reference in subsection (1) to an officer or employee of the Parliament is a reference to the following:
- (a) the Clerk of the Senate;
  - (b) the Clerk of the House of Representatives;
  - (c) the Secretary of another Department of the Parliament established under section 54 of the *Parliamentary Service Act 1999*;
  - (ca) the Parliamentary Budget Officer appointed under section 64X of that Act;
  - (d) the Parliamentary Librarian appointed under section 38C of that Act;
  - (e) a person engaged as an employee under section 22 of that Act.

## **10 Meaning of employment in Government Service**

- (1) Subject to this section, a person shall, for the purposes of this Act, be taken to be employed in Government Service if the person is employed by the Commonwealth, whether he or she is so employed under a law or under a contract of service or apprenticeship and whether he or she is employed in a full-time or in a part-time capacity.
- (2) Without limiting by implication the generality of subsection (1), but subject to this section, a person:
- (a) who constitutes, or is acting as the person constituting, a public authority of the Commonwealth; or
  - (b) is, or is acting as, a member of such an authority or is a deputy of such a member;
- shall, for the purposes of this Act, be deemed to be employed in Government Service, and his or her employment shall, for those purposes, be deemed to be constituted by the performance of the duties of the authority, his or her duties as such a member or person acting as such a member or his or her duties as such a deputy, as the case may be.

- (2A) For the purposes of this Act, the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (within the meaning of the *Australian Federal Police Act 1979*) is taken to be employed in Government Service.
- (3) Subject to subsection (4), this Act does not apply to a person in respect of any period during which he or she held or holds office as a Judge as defined by section 4 of the *Judges' Pensions Act 1968*.
- (4) If a person appointed as a Judge as defined by section 4 of the *Judges' Pensions Act 1968* was, immediately before his or her appointment, a person to whom this Act, an Act repealed by this Act or sections 73 and 74 of the *Public Service Act 1922* applied, the person may, within 3 months after his or her appointment as a Judge or, if he or she was appointed as such a Judge before the commencement of this Act, within 3 months after the commencement of this Act, elect, by notice in writing to the Attorney-General, that subsection (3) shall not apply to him or her and this Act shall then be deemed to have applied, or to apply, to and in relation to him or her in respect of any period during which he or she held or holds the appointment as if the performance of the duties of the appointment constituted employment in Government Service.
- (6) Notwithstanding anything contained in subsection (1) or (2), a person:
- (a) who is employed by the Commonwealth in a particular capacity and remunerated, in respect of his or her employment in that capacity, by fees, allowances or commission;
  - (aa) appointed:
    - (i) to constitute, or act as the person constituting, a public authority of the Commonwealth; or

- (ii) to be, or to act as, a member of such an authority or to be a deputy of such a member;  
who is remunerated, in respect of his or her performance of the duties of that appointment, by fees, allowances or commission;
  - (ab) who is the holder of a principal executive office within the meaning of the *Remuneration Tribunal Act 1973* (other than a principal executive office prescribed for the purposes of this paragraph);
  - (b) who is a member of the Defence Force;
  - (c) who is employed by the Commonwealth in an honorary capacity;
  - (d) who is employed in the Public Service of a Territory, in the ACT teaching service or in the Teaching Service of the Northern Territory;
  - (e) who is temporarily transferred to the service of the Commonwealth from the service of a State or an authority of a State, or whose services are temporarily loaned to the Commonwealth by a State or an authority of a State;
  - (ea) who is temporarily transferred to the service of the Commonwealth from the service of the Australian Capital Territory or an authority of that Territory, or whose services are temporarily loaned to the Commonwealth by that Territory or an authority of that Territory;
  - (f) who holds an office or is employed under the *Reserve Bank Act 1959* or the *Commonwealth Banks Act 1959*; or
  - (g) who is, after the commencement of this Act, appointed or engaged for employment outside Australia only;
- shall not be taken, by reason only of his or her being such a person, to be employed in Government Service for the purposes of this Act.
- (7) This section applies in relation to employment before the commencement of this Act in like manner as it applies in relation to employment after the commencement of this Act.



## 11 Period of service

- (1) Subject to this Act, the period of service of an employee for the purposes of this Act is the period during which he or she has been employed continuously in Government Service.
- (2) Where, prior to his or her current period of employment in Government Service, an employee was employed continuously in:
- (a) any service of a State;
  - (b) any service of an authority of a State;
  - (c) the Public Service of a Territory, the ACT teaching service, or the Teaching Service of the Northern Territory;
  - (ca) any service of an authority of the Northern Territory, not being employment at a time when the authority was a public authority of the Commonwealth;
  - (cb) any service of an authority of the Australian Capital Territory, not being employment at a time when the authority was a public authority of the Commonwealth;
  - (d) any service of an authority established or constituted by or under a law of an external Territory;
  - (e) the Public Service of the former Territory of Nauru; or
  - (f) other relevant service;
- and the period for which he or she was so employed was continuous with his or her current period of employment, his or her period of service for the purposes of this Act includes, subject to this Act, the period for which he or she was so employed.
- (3) Where an employee has been employed:
- (a) in 2 or more of the services referred to in paragraphs (2)(a), (b), (c), (ca), (d), (e) and (f); or
  - (b) in 1 or more of those services and, at any time prior to his or her current period of employment, in Government Service;
- and the periods for which he or she was so employed are continuous with one another and with his or her current period of employment, the sum of these periods of employment shall, subject to this Act, be included in his or her period of service for the purposes of this Act.

- (4) The period of service of an employee does not include any period during which:
- (a) he or she was or is employed in a qualifying service in an honorary capacity and was not or is not also employed in a qualifying service in some other capacity, not being employment in respect of which he or she was or is remunerated by fees, allowances or commission only; or
  - (b) he or she was or is remunerated, in respect of employment in a qualifying service, by fees, allowances or commission only and was not or is not remunerated in respect of other employment in a qualifying service in some other manner.
- (5) For the purposes of paragraph (2)(f), employment:
- (a) as a member of the Defence Force;
  - (b) as a person holding an office, or employed, under the *Reserve Bank Act 1959* or the *Commonwealth Banks Act 1959*; or
  - (c) outside Australia as a person appointed or engaged by the Commonwealth after the commencement of this Act for employment outside Australia only;
- shall be deemed to be employment in other relevant service.

## 12 Continuity of service

- (1) Where a person is, or has been, absent, without the approval of his or her employer, from his or her employment in a qualifying service, otherwise than for a continuous period of more than 12 months, the continuity of the employment of the person in that service shall be deemed not to be, or to have been, broken by that absence, but the person shall be deemed, for the purposes of this Act, not to be, or to have been, employed in that service during the period of the absence.
- (2) For the purposes of this Act, a person shall be deemed not to break, or to have broken, the continuity of his or her employment in a qualifying service by reason of his or her being or having been:
- (a) on leave of absence with pay or part pay; or

- (b) on leave of absence without pay;  
and, subject to subsections (3) and (4), the person shall be deemed, for the purposes of this Act, to have been employed in that service during the period of the absence.
- (3) Subject to subsection (4), where a person is or has been absent from his or her employment on leave of absence without pay (not being leave of absence on account of illness or in respect of a period of specified defence service referred to in subsection (10)) and the period during which he or she is or was so absent would, but for this subsection, be included in his or her period of service, the period during which he or she is or was absent on that leave does not form part of his or her period of service for the purposes of this Act:
- (a) unless a chief executive officer, or the person who granted the leave, determined (otherwise than under this Act), either at the time of the grant or at a later time, that the period of absence be included in the person's period of service for the purpose of the granting of long service leave; or
  - (b) unless the approving authority determines under this Act that the period during which he or she is or was so absent be included in his or her period of service for the purposes of this Act.
- (4) Where a person is or has been absent from his or her employment in Government Service on leave granted for the purpose of enabling him or her to occupy an executive office as provided in subsection (11):
- (a) the period of the absence shall be reckoned as part of his or her period of service for the purpose of determining whether a provision of this Act that applies only to and in relation to employees whose periods of service are at least 1 year or 10 years, as the case may be, applies to and in relation to him or her; and
  - (b) the person shall be deemed not to have been employed in that service during the period of absence for any other purpose.

- (5) Where a continuous period of employment of a person in a qualifying service has commenced after, but not more than 12 months after, the expiration of a continuous period of previous employment of the person in a qualifying service, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another.
- (6) For the purposes of subsection (5), where a person, having ceased to be employed in a qualifying service, has undertaken a course of full-time training:
- (a) under a scheme established by the Commonwealth for the training of persons who have served in the Defence Force; or
  - (b) under a prescribed training scheme;
- before resuming employment in a qualifying service, the resumption of his or her employment in a qualifying service shall be deemed to have occurred not more than 12 months after he or she ceased to be so employed if the period between his or her ceasing to be so employed and the resumption of that employment, less the period of his or her course of full-time training under that scheme, does not exceed 12 months.
- (7) Where a continuous period of employment of a person in a service, being Government Service or a service referred to in paragraph 11(2)(c), (d), (e) or (f), has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in such a service, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that:
- (a) the termination of his or her employment at the expiration of that period of previous employment was due to ill-health; and
  - (b) the commencement of that first-mentioned period of employment occurred not more than 12 months after his or her health became so restored as to enable him or her to perform duties of a kind that were suitable to be performed by him or her having regard to the duties performed by him or her immediately before the expiration of that period of previous employment.

## (8) Where:

- (a) a continuous period of employment of a person in a service, being a service referred to in paragraph 11(2)(a) or (b), has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in a service, being Government Service or a service referred to in paragraph 11(2)(c), (d), (e) or (f); or
- (b) a continuous period of employment of a person in a qualifying service has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in a service referred to in paragraph 11(2)(a) or (b);

those periods of employment referred to in paragraph (a) or (b) of this subsection, whichever is applicable, shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that:

- (c) the termination of his or her employment at the expiration of that period of previous employment was due to ill-health;
- (d) the person was, due to his or her ill-health, unemployed for a period immediately following the expiration of that period of previous employment; and
- (e) the commencement of the period of employment first- mentioned in paragraph (a) or (b), whichever is applicable, occurred not more than 12 months after the expiration of the period of unemployment referred to in paragraph (d).

## (9) A person shall not be deemed, for the purposes of this Act, to have been employed in a qualifying service during a period that would, but for subsection (5), (6), (7) or (8), have broken the continuity of his or her service.

## (10) For the purposes of subsection (3), a person shall be taken to have been absent in respect of a period of specified defence service if he or she was, during that period, serving:

- (a) on continuous full-time service in the Reserves (within the meaning of the *Defence Act 1903*); or

- (b) in a part of the Reserves for such a period as was fixed by or in accordance with regulations in force under the *Defence Act 1903* as in force at the relevant time; or
  - (c) on national service.
- (11) For the purposes of subsection (4), an employee shall be taken to occupy an executive office if and only if:
- (a) the employee is an officer or employee, within the meaning of the *Fair Work (Registered Organisations) Act 2009*, of an organisation within the meaning of that Act; or
  - (b) he or she occupies an office that is a prescribed office for the purposes of this subsection;
- and he or she is required to devote the whole of his or her time to the duties of the office.

### **13 Modifications of sections 11 and 12 in relation to service in the Independent State of Papua New Guinea**

- (1) In this section:

***Australian Staffing Assistance Group*** means the body formerly established under that name by the *Papua New Guinea (Staffing Assistance) Act 1973*.

***Papua New Guinea*** has the same meaning as it had in the *Papua New Guinea Act 1949* as in force on 15 September 1975.

***relevant service*** means:

- (a) the service of the Independent State of Papua New Guinea;
  - (b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of the Independent State of Papua New Guinea; or
  - (c) the service of the Commonwealth in respect of the Australian Staffing Assistance Group.
- (2) This section applies in relation to a person, being an employee, who was, immediately before 16 September 1975, employed in:

- (a) the service of Papua New Guinea;
  - (b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of Papua New Guinea; or
  - (c) the service of the Commonwealth as a member of the Australian Staffing Assistance Group.
- (3) Where, during a period (in this section referred to as the *period of his or her relevant employment*) that commenced on 16 September 1975:
- (a) a person to whom this section applies was employed continuously in a service referred to in paragraph (a) or (b) of the definition of *relevant service* in subsection (1); or
  - (b) a person to whom this section applies was employed continuously in 2 or more of the services referred to in that definition and the periods for which he or she was so employed were continuous with one another;
- the person:
- (c) shall, for the purposes of subsection 11(2), be deemed to have been continuously employed in other relevant service during the period of his or her relevant employment; and
  - (d) shall, for the purposes of the provisions of this Act other than sections 11, 12 and 14, be deemed to have been continuously employed in a qualifying service during the period of his or her relevant employment.
- (4) For the purposes of subsection (3):
- (a) a period of employment of a person after 15 September 1975 in the service of the Commonwealth as a member of the Australian Staffing Assistance Group shall not be included in his or her period of relevant employment unless it was continuous with, and immediately preceded, a period during which he or she was employed in a service referred to in paragraph (a) or (b) of the definition of *relevant service* in subsection (1); and
  - (b) a person shall be taken not to have been employed in the service of a body, being the Commonwealth, the Independent

State of Papua New Guinea or a body referred to in paragraph (b) of the definition of *relevant service* in subsection (1), during a period:

- (i) during which he or she was employed by that body in an honorary capacity only; or
  - (ii) in respect of which he or she was remunerated for his or her services to that body by fees, allowances or commission only.
- (5) For the purposes of subsection (3), subsections 12(1), (2), (3) and (10) apply to and in relation to any employment of a person to whom this section applies after 15 September 1975 in a relevant service as if it were employment in a qualifying service.
- (6) Where a continuous period of employment of a person to whom this section applies in a qualifying service has commenced after, but not more than 12 months after, the expiration of the period of his or her relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another.
- (7) For the purposes of subsection (6), where a person to whom this section applies has undertaken a course of full-time training:
- (a) under a scheme established by the Commonwealth for the training of persons who have served in the Defence Force; or
  - (b) under a training scheme that is a prescribed training scheme for the purposes of paragraph 12(6)(b);
- after the expiration of the period of his or her relevant employment and before he or she has become employed in a qualifying service, he or she shall be deemed to have become employed in the qualifying service not more than 12 months after the expiration of the period of his or her relevant employment if the period between the date of expiration of the period of his or her relevant employment and the date on which he or she became employed in the qualifying service, less the period of his or her course of full-time training under that scheme, does not exceed 12 months.



- (8) Where a continuous period of employment of a person to whom this section applies in a service of a kind referred to in paragraph 11(2)(c), (d) or (f) has commenced after, but not immediately after, the expiration of the period of his or her relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that:
- (a) the termination of his or her employment at the expiration of the period of his or her relevant employment was due to his or her ill-health; and
  - (b) the commencement of that first-mentioned period of employment occurred not more than 12 months after his or her health became so restored as to enable him or her to perform duties of a kind that were suitable to be performed by him or her having regard to the duties performed by him or her immediately before the expiration of the period of his or her relevant employment.
- (9) Where a continuous period of employment of a person to whom this section applies in a service of a kind referred to in paragraph 11(2)(a) or (b) has commenced after, but not immediately after, the termination of the period of his or her relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that:
- (a) the termination of his or her employment at the expiration of his or her period of relevant employment was due to his or her ill-health;
  - (b) he or she was, due to his or her ill-health, unemployed for a period immediately following the expiration of the period of his or her relevant employment; and
  - (c) he or she became employed in that first-mentioned employment not more than 12 months after the expiration of the period of unemployment referred to in paragraph (b).
- (10) Where, by virtue of subsection (6), (7), (8) or (9), 2 periods of employment of a person to whom this section applies are to be deemed to be continuous with one another although they are

separated by another period, the person shall not, by virtue of that subsection, be deemed to be employed in a qualifying service during that other period.

- (11) A person employed in the service of the Commonwealth as a member of the Australian Staffing Assistance Group who is not so employed on transfer from the Australian Public Service under an arrangement made under section 47D of the *Public Service Act 1922* shall not be taken, by reason only of being employed as a member of that Group, to be, or to have been, employed in Government Service for the purposes of this Act while employed as a member of that Group.
- (12) Notwithstanding subsection (11), where a person who is employed in the service of the Commonwealth otherwise than as a member of the Australian Staffing Assistance Group has, at any time prior to his or her current period of employment, been employed by the Commonwealth as a member of that Group, the period or periods during which he or she was employed as a member of that Group prior to his or her current period of employment shall be treated as a period or periods of employment in Government Service for the purposes of this Act.

#### **14 Concurrent employment**

- (1) Where the period of service of an employee includes a period of employment in a qualifying service that is wholly or partly concurrent with a period of employment in another qualifying service, subsections (3), (4) and (5) apply for the purpose of determining the extent (if any) to which each of those periods is to count in ascertaining the period of leave that may at any time be granted to the employee under this Act or the payment that may at any time be made under this Act to or in respect of the employee.
- (2) In applying subsections (3), (4) and (5) to and in relation to an employee:
  - (a) subsection (3) shall, if applicable, be applied before subsection (4) or (5); and

- (b) subsection (4) shall, if applicable, be applied before subsection (5).
- (3) Where, on the day on which leave is granted to an employee under this Act or an employee ceases to be an employee, the employee is also employed in a qualifying service other than Government Service, so much of his or her current period of employment in that first-mentioned service as is or was concurrent with any of his or her employment in Government Service does not count as employment in that first-mentioned service.
- (4) Where a person is or was employed in a qualifying service in a full-time capacity, any employment in a qualifying service in a part-time capacity that is or was concurrent with that first-mentioned employment does not count as employment in such a service.
- (5) Where a person who is or was employed in a qualifying service in a part-time capacity renders or rendered on a day service for a period in accordance with the terms of his or her employment and the person also renders or rendered service for a further period on that day in accordance with the terms of other employment in a part-time capacity in a qualifying service, his or her period of employment on that day shall be taken to be a period equal to the sum of those periods.
- (6) This section applies in relation to the employment of an employee to whom section 13 applies during the period referred to in that section as the period of his or her relevant employment as if:
- (a) in a case where he or she was employed in one service only during that period—his or her employment in that service was employment in a qualifying service; or
  - (b) in a case where he or she was employed in 2 or more services during that period—his or her employment in each such service was employment in a qualifying service.

## **15 Award etc. in relation to long service leave for seamen**

- (1) This Act:
-

- (a) does not affect the operation of an award, order or agreement in force immediately before the commencement of this Act under the *Conciliation and Arbitration Act 1904* in relation to long service leave for seamen included in a prescribed class of seamen;
  - (b) shall not be deemed to prevent the making of an award (including an award having effect from a date before the commencement of this Act) or an order, or the certification of an agreement, under that Act in relation to long service leave for seamen included in a prescribed class of seamen, or to affect the operation of such an award, order or agreement; and
  - (c) does not prevent the making of an award or workplace agreement, or the certification of an agreement, under the *Workplace Relations Act 1996* in relation to long service leave for maritime employees included in a prescribed class of maritime employees, or affect the operation of such an award or workplace agreement or agreement; and
  - (d) does not affect the operation of an AWA within the meaning of Schedule 7A to the *Workplace Relations Act 1996* in relation to long service leave for maritime employees included in a prescribed class of maritime employees; and
  - (e) does not prevent the making of an award, order, agreement or determination under the *Fair Work Act 2009* in relation to long service leave for maritime employees included in a prescribed class of maritime employees, or affect the operation of such an award, order, agreement or determination.
- (2) Where an employee has, in accordance with an award, order or agreement referred to in subsection (1), been granted long service leave, or been paid in lieu of long service leave, in respect of a period of employment, no part of that period of employment shall be included in the period of service of the employee for the purposes of this Act.
- (3) Where immediately before the commencement of this Act, by virtue of subsection 6A(2) of the *Commonwealth Employees'*

*Furlough Act 1943*, a part of the period of employment of an employee was not included in the period of service of the employee for the purposes of that Act, that part of the period of employment of the employee shall not be included in the period of service of the employee for the purposes of this Act.

(4) In this section:

*maritime employee* has the same meaning as in the *Fair Work Act 2009*.

*seamen* has the same meaning as in Division 2 of Part III of the *Conciliation and Arbitration Act 1904*.

## **16 Long service leave and payments in lieu of long service leave**

- (1) Subject to section 17, an employee is not eligible to be granted long service leave unless his or her period of service is at least 10 years.
- (2) Where the period of service of an employee is at least 10 years, the approving authority may, at any time, grant to the employee:
  - (a) in the case of a category A employee—long service leave on full salary for a period not exceeding his or her long service leave credit at that time; or
  - (b) in the case of a category B employee—long service leave on full salary in relation to his or her full-time service for a period not exceeding his or her long service leave credit related to his or her full-time service at that time or long service leave on full salary in relation to his or her part-time service for a period not exceeding his or her long service leave credit related to his or her part-time service at that time or both.
- (3) Where a period of long service leave may at any time be granted to an employee under subsection (2), the approving authority may, at the request of the employee, grant to him or her long service leave on half salary for a period not exceeding twice that first-mentioned period.

- (4) Subject to subsections (5) and (6), where an employee whose period of service is at least 10 years ceases to be an employee otherwise than by death, the approving authority shall authorize payment to him or her of an amount equal to:
- (a) in the case of a category A employee—the amount of salary that would be payable to him or her for a period of service equal to the period of his or her long service leave credit immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave immediately before he or she ceases to be an employee; or
  - (b) in the case of a category B employee—the sum of:
    - (i) the amount of salary that would be payable to him or her for a period of service equal to the period of his or her long service leave credit related to his or her full-time service immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave related to his or her full-time service immediately before he or she ceases to be an employee; and
    - (ii) the amount of salary that would be payable to him or her for a period of service equal to the period of his or her long service leave credit related to his or her part-time service immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave related to his or her part-time service immediately before he or she ceases to be an employee.
- (5) Subsection (4) does not apply to an employee who requests the approving authority in writing, before he or she ceases to be an employee, not to authorize payment to him or her under that subsection.

- (6) Where an employee requests the approving authority in writing before he or she ceases to be an employee to authorize a payment to him or her, upon his or her ceasing to be an employee, of a specified amount, being an amount less than the amount that would otherwise be payable to him or her under subsection (4), that subsection does not empower the approving authority to authorize a payment to him or her of an amount greater than the amount so specified.
- (7) Where an employee whose period of service is at least 10 years dies, the approving authority may authorize payment to a dependant of the employee of an amount equal to, or payments to any 2 or more dependants of the employee of amounts aggregating, the amount that would have been payable to the employee under subsection (4) if the employee had ceased to be an employee otherwise than by death on the day on which the employee died.

### **17 Extended leave or pay in lieu of leave for employees not entitled to long service leave**

- (1) Where an employee whose period of service is less than 10 years but not less than 1 year is to cease to be an employee:
  - (a) on or subsequent to his or her attaining the minimum retiring age; or
  - (b) upon his or her retrenchment;the approving authority may grant to him or her long service leave on full salary, to be taken so as to expire immediately before he or she is to cease to be an employee, being:
  - (c) in the case of a category A employee—long service leave for a period not exceeding his or her long service leave credit immediately before he or she commences that leave; or
  - (d) in the case of a category B employee—long service leave in relation to his or her full-time service for a period not exceeding his or her long service leave credit related to his or her full-time service, and long service leave in relation to his or her part-time service for a period not exceeding his or her long service leave credit related to his or her part-time

service, immediately before he or she commences whichever of those periods of leave he or she commences first.

- (2) Subject to subsections (3) and (4), where an employee whose period of service is less than 10 years but not less than 1 year:
- (a) ceases to be an employee, otherwise than by reason of his or her death, on, or subsequent to, his or her attaining the minimum retiring age;
  - (b) ceases to be an employee by reason of his or her retrenchment; or
  - (c) ceases to be an employee and satisfies the approving authority that his or her so ceasing is due to ill health of such a nature as to justify his or her so ceasing;
- the approving authority shall authorize payment to him or her:
- (d) in the case of a category A employee—of an amount equal to the amount of salary that would be payable to him or her for a period of service equal to the period of his or her long service leave credit immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave immediately before he or she ceases to be an employee; or
  - (e) in the case of a category B employee—of an amount equal to the sum of:
    - (i) the amount of salary that would be payable to him or her in respect of a period of service equal to the period of his or her long service leave credit related to his or her full-time service immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave related to his or her full-time service immediately before he or she ceases to be an employee; and
    - (ii) the amount of salary that would be payable to him or her for a period of service equal to the period of his or



her long service leave credit related to his or her part-time service immediately before he or she ceases to be an employee if salary were payable to him or her in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him or her in relation to his or her long service leave related to his or her part-time service immediately before he or she ceases to be an employee.

- (3) Subsection (2) does not apply to an employee who requests the approving authority in writing, before he or she ceases to be an employee, not to authorize a payment to him or her under that subsection.
- (4) Where an employee requests the approving authority in writing before he or she ceases to be an employee to authorize a payment to him or her, upon his or her ceasing to be an employee, of a specified amount, being an amount less than the amount that would otherwise be payable to him or her under subsection (2), that subsection does not empower the approving authority to authorize a payment to him or her of an amount greater than the amount so specified.
- (5) Where an employee whose period of service is less than 10 years but not less than 1 year dies, the approving authority may authorize payment to a dependant of the employee of an amount equal to, or to 2 or more dependants of the employee of amounts aggregating, the amount that would have been payable to the employee under subsection (2) if the employee had, on the day on which the employee died, ceased to be an employee otherwise than by reason of his or her death on, or subsequent to, his or her attaining the minimum retiring age.

## 18 Calculation of long service leave credit

(1) For the purposes of sections 16 and 17:

- (a) the long service leave credit of a category A employee on a day is the period equal to the number of months ascertained in accordance with the formula:

$$\frac{3a}{10} - b$$

where:

**a** is the number of years comprised in the part of his or her period of service that accrued before the prescribed day; and  
**b** is the number of months comprised in the period or the sum of the periods of long service leave (if any) previously granted to him or her;

- (b) the long service leave credit related to the full-time service of a category B employee on a day is the period equal to the number of months ascertained in accordance with the formula:

$$\frac{3c}{10} - d$$

where:

**c** is the number of years comprised in a period equal to the period, or the sum of the periods, of his or her employment in a full-time capacity included in the part of his or her period of service that accrued before the prescribed day; and  
**d** is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to him or her in relation to his or her full-time service; and

- (c) the long service leave credit related to the part-time service of a category B employee on a day is the period equal to the number of months ascertained in accordance with the formula:

$$\frac{3e}{10} - f$$

where:

*e* is the number of years comprised in a period equal to the period, or the sum of the periods, of his or her employment in a part-time capacity included in the part of his or her period of service that accrued before the prescribed day; and

*f* is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to him or her in relation to his or her part-time service.

- (2) In this section, ***prescribed day*** means:
- (a) in relation to a long service leave credit of an employee on the day on which he or she ceases to be an employee—the day immediately following the last day of the last completed month in the employee’s period of service ending on the day on which he or she ceases to be an employee; or
  - (b) in relation to a long service leave credit of an employee on any other day—the day immediately following the last day of the last completed year of service included in the employee’s period of service ending on that other day.

## 19 Application of section 18

- (1) Subject to subsection (2), in the application of section 18 to and in relation to an employee:
- (a) a reference to a period of long service leave granted to him or her is a reference to a period of long service leave granted to him or her, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of his

- or her employment that is included in his or her period of service;
- (b) a reference to a period of long service leave granted to him or her in relation to his or her full-time service is a reference to a period of long service leave granted to him or her, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of employment in a full-time capacity that is included in his or her period of service; and
  - (c) a reference to a period of long service leave granted to him or her in relation to his or her part-time service is a reference to a period of long service leave granted to him or her, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of employment in a part-time capacity that is included in his or her period of service.
- (2) In the application of section 18, to and in relation to an employee:
- (a) if the employee has been granted long service leave on half salary under this Act or otherwise in respect of a period of his or her employment included in his or her period of service for the purposes of this Act, the period of that leave shall be deemed to have been a period equal to half that period;
  - (b) if the approving authority is satisfied that long service leave that was granted to the employee otherwise than under this Act, under any of the Acts repealed by this Act or under the *Public Service Act 1922* in respect of a period of employment included in his or her period of service for the purposes of this Act was not granted to him or her on full salary or half salary having regard to the terms and conditions of the employment, the period of that long service leave shall be deemed to have been such a period as is determined by the approving authority to be the period of long service leave that the employee would have been granted in respect of that employment if he or she had been granted long service leave on full salary;
  - (c) if the employee has been paid an amount under this Act, under any of the Acts repealed by this Act or under

section 54C, 73, 74, 75A, 81K or 81V of the *Public Service Act 1922* in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in his or her period of service for the purposes of this Act, the employee shall be deemed to have been granted, on the day on which that payment was made to him or her, a period of long service leave in relation to his or her full-time service or to his or her part-time service, as the case may be, equal to the period of long service leave on full salary in relation to which that payment was made to him or her; and

- (d) if the employee has, in circumstances that are similar to the circumstances in which an amount is payable to an employee under section 16 or 17, been paid an amount otherwise than under this Act or a section of the *Public Service Act 1922* referred to in paragraph (c) in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in his or her period of service for the purposes of this Act, the employee shall be deemed to have been granted, on the day on which that payment was made to him or her, such a period of long service leave in relation to his or her full-time service or in relation to his or her part-time service, as the case may be, as is determined by the approving authority to be equal to the period of his or her employment in respect of which that payment represented full salary.

## 20 Rate of salary while absent on long service leave

- (1) Where a period of long service leave is granted under section 16 or 17 to a category A employee on full salary, salary is payable to the employee in respect of any part of the leave:
- (a) if the employee has been employed in a full-time capacity throughout his or her period of service—at the rate that is his or her current rate of salary in respect of that part of the leave;
- (b) if the employee has been employed in a part-time capacity throughout his or her period of service and there has been no

change during that period in the number of hours per week for which the employee has, by the terms of his or her employment, been required to render service—at the rate per week at which salary would be payable to him or her in respect of that part of the leave if he or she were not absent on long service leave but were continuing to render service for that number of hours per week in the capacity in which he or she was employed on the relevant day; or

- (c) if the employee has been employed in a part-time capacity throughout his or her period of service but there has been a change during that period in the number of hours per week for which he or she was required by the terms of his or her employment to render service—at the rate per week ascertained by multiplying the relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her service.
- (2) Where a period of long service leave on full salary is granted under section 16 or 17 to a category B employee who is employed in a full-time capacity on the relevant day:
- (a) salary is payable to the employee in respect of any part of that leave that is granted to him or her in relation to his or her full-time service—at the rate that is his or her current rate of salary in respect of that part of the leave; and
  - (b) salary is payable to him or her in respect of any part of that leave that is granted to him or her in relation to his or her part-time service—at a weekly rate, being the lesser of:
    - (i) the rate that is his or her current rate of salary per week in respect of that part of the leave; and
    - (ii) the rate per week ascertained in accordance with the formula:

$$\frac{ab}{c}$$

where:

***a*** is the rate that is his or her current rate of salary per week in respect of that part of the leave;

***b*** is the prescribed average number of hours of his or her service; and

***c*** is the number of hours of service that he or she was, on the relevant day, required by the terms of his or her employment to render during a week.

(3) Where a period of long service leave on full salary is granted under section 16 or 17 to a category B employee who is employed in a part-time capacity on the relevant day:

(a) salary is payable to him or her in respect of any part of the leave that is granted to him or her in relation to his or her full-time service—at the rate at which salary would be payable to him or her in respect of that part of the leave if he or she were not on long service leave but were rendering full-time service in the capacity in which he or she was employed on the relevant day; and

(b) salary is payable to him or her in respect of any part of the leave that is granted in relation to his or her part-time service—at the rate per week ascertained by multiplying his or her relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his or her service.

(4) In this section:

***current rate of salary***, in relation to a part of a period of long service leave that is granted to an employee, means the rate at which salary would be payable to him or her in respect of that part of the leave if he or she were not absent on long service leave but were continuing to be employed in the capacity in which he or she was employed on the relevant day.

***prescribed average number of hours*** means:

(a) in relation to a category A employee who is granted a period of long service leave:

- (i) his or her average number of hours of employment per week during the relevant period; or
  - (ii) if the employee satisfies the approving authority that his or her average number of hours of employment per week during the relevant period is less than his or her average number of hours of employment per week during his or her period of service—that last-mentioned average number of hours; and
- (b) in relation to a category B employee who is granted a period of long service leave:
- (i) his or her average number of hours of employment per week during the relevant period; or
  - (ii) if the employee satisfies the approving authority that his or her average number of hours of employment per week during the relevant period is less than his or her average number of hours of employment per week throughout his or her period or periods of employment in a part-time capacity included in his or her period of service—that last-mentioned average number of hours.

**relevant day**, in relation to an employee who has been granted long service leave, means the day immediately preceding the day on which that leave commences.

**relevant period** means:

- (a) in relation to a category A employee who has been granted a period of long service leave, the 12 months of his or her period of service ending on the day before the day on which the leave commences; and
- (b) in relation to a category B employee who has been granted a period of long service leave:
  - (i) the period of, or the periods aggregating, 12 months during which he or she was last employed in a part-time capacity before the day on which the leave commences; or
  - (ii) if he or she has not been employed in a part-time capacity for 12 months—the period or periods during



which he or she has been employed in a part-time capacity.

**relevant rate per hour**, in relation to a part of a period of long service leave that has been granted to an employee who was employed in a part-time capacity on the relevant day, means the rate per hour at which salary would be payable to him or her in respect of that part of the leave if he or she were not absent on long service leave but were continuing to render part-time service in the capacity in which he or she was employed on the relevant day.

## **21 Rate of salary in relation to pay in lieu of leave**

(1) For the purposes of sections 16 and 17, where an employee ceases to be an employee:

- (a) the rate applicable to him or her in relation to his or her long service leave;
- (b) the rate applicable to him or her in relation to his or her long service leave related to his or her full-time service; or
- (c) the rate applicable to him or her in relation to his or her long service leave related to his or her part-time service;

immediately before he or she ceases to be an employee is the rate at which full salary would be payable to him or her in respect of his or her employment on the day on which he or she ceases to be an employee (in this section referred to as **the terminating day**) if:

- (d) he or she were absent from duty on the terminating day in accordance with a period of long service leave, long service leave related to his or her full-time service or long service leave related to his or her part-time service, as the case requires, that had been granted to him or her on full salary to commence on the terminating day; and
  - (e) on the day immediately before the terminating day he or she had completed the period of service that he or she completes on the terminating day.
- (2) Where an employee is not employed in the same capacity on the terminating day and on the day immediately before the terminating day, subsection (1) applies in relation to him or her as if he or she

had been employed on the day immediately before the terminating day in the capacity in which he or she is employed on the terminating day.

## **22 Long service leave benefits not to be granted under other laws**

- (1) Where a person who holds an office or appointment under a relevant law, or is employed under a relevant law, is, for the purposes of this Act, employed in Government Service by virtue of holding that office or appointment or of being so employed, then, unless otherwise expressly provided by a relevant law, nothing in a relevant law shall be taken to authorize the provision of long service leave benefits for or in relation to the person under a relevant law or under terms and conditions of employment determined under a relevant law.
- (2) In subsection (1):
  - (a) **relevant law** means a law of the Commonwealth or of an internal Territory that is in force on the day on which this Act receives the Royal Assent or that comes into force on or after that day; and
  - (b) **long service leave benefits** means any benefits of the kind provided under section 16 and 17.

## **23 Additional provisions relating to death of an employee**

- (1) Where the approving authority, after consideration of all the circumstances, directs that, for the purposes of this Act, the death of an employee whose period of service is at least 1 year is to be presumed to have occurred on a specified date, this Act applies in relation to the employee as if he or she had died on that date.
- (2) Where there are 2 or more dependants of a deceased employee, the approving authority shall, in exercising the powers conferred on it by subsection 16(7) or 17(5), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the employee.
- (3) Where an employee dies:

- (a) the approving authority may, if it has not authorized a payment or payments under subsection 16(7) or 17(5), whichever is applicable, authorize payment of an amount equal to the amount referred to in whichever of those subsections is applicable to the legal personal representative of the employee; and
  - (b) the approving authority shall, if it has not authorized a payment to a dependant, or payments to dependants, of the employee or a payment to the legal personal representative of the employee, of an amount equal to the amount referred to in subsection 16(7) or 17(5), whichever is applicable, within 12 months after the death of the employee or, if the approving authority gave a direction in relation to the employee under subsection (1), the date on which it gave that direction, authorize payment of that amount to the legal personal representative of the employee.
- (4) Where an amount is payable under this Act to a person, being an employee or a dependant of an employee, who is under a legal disability, the approving authority may, instead of authorizing payment of the amount to the person, authorize payment of the amount to such trustee or trustees as the approving authority appoints to be held by that trustee or those trustees upon such trusts for the benefit of the person as the approving authority directs and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for the purposes of this Act, other than this section, be deemed to have been paid to the person.
- (5) Where, upon the death of an employee, the amount payable under this Act in relation to his or her death would be *bona vacantia*, this Act does not authorize that amount to be paid in relation to the employee and, if the amount is payable by a public authority of the Commonwealth, the authority shall pay the amount to the Commonwealth.

## **24 Transitional provision**

- (1) Where an employee ceased to be an employee on or after 1 January 1973 and before the commencement of this Act and the amount

that the approving authority could have authorized to be paid to or in relation to him or her under this Act upon his or her ceasing to be such an employee if this Act and the *Public Service Amendment Act 1976* had come into operation on that first-mentioned date exceeds that amount (if any) or the sum of the amounts (if any) that have been authorized or are authorized to be paid to or in relation to him or her under whichever of the relevant provisions were applicable to the employee:

- (a) if the employee ceased to be an employee by reason of his or her death:
    - (i) the approving authority may authorize payment to a dependant of the employee of an amount equal to, or payment to 2 or more dependants of the employee of amounts aggregating, the excess;
    - (ii) if the approving authority has not authorized a payment to a dependant, or payments to dependants, under subparagraph (i), the approving authority may authorize payment of an amount equal to the excess to the legal personal representative of the employee; and
    - (iii) if the approving authority has not authorized any payment under subparagraph (i) or (ii) within 12 months after the commencement of this Act or, if it has been directed that the death of the employee is to be presumed to have occurred, within 12 months after the date on which that direction was given, the approving authority shall authorize payment of an amount equal to the excess to the legal personal representative of the employee;
  - (b) if the employee has died after ceasing to be an employee—the approving authority shall authorize payment of an amount equal to the excess to the legal personal representative of the employee; or
  - (c) in any other case—the approving authority shall authorize payment of an amount equal to the excess to the employee.
- (2) Where there are 2 or more dependants of a deceased employee in relation to whom paragraph (1)(a) applies, the approving authority

shall, in exercising the power conferred on it by subparagraph (1)(a)(i), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the employee.

- (3) In subsection (1), a reference to the relevant provisions is a reference to any of the following provisions:
- (a) sections 7 and 8 of the *Commonwealth Employees' Furlough Act 1943*;
  - (b) sections 54C, 73, 74, 75A, 81K and 81V of the *Public Service Act 1922*; and
  - (c) section 14 of the former *Statistics (Arrangements with States) Act 1956*.

## 24A Commonwealth Teaching Service—transitional

- (1) In this section, unless the contrary intention appears:

***long service leave*** includes long leave, furlough, extended leave and any other leave in the nature of long service leave (however described).

***member of the Service*** has the same meaning as in the *Commonwealth Teaching Service Act 1972* as in force on 1 November 1988.

***prescribed teacher*** means:

- (a) a member of the Service who became such a member after 13 September 1973 and before 1 January 1974 and was, immediately before becoming such a member:
  - (i) employed in the teaching service of New South Wales and engaged in teaching duties in a Commonwealth school in the Australian Capital Territory; or
  - (ii) employed in the teaching service of South Australia and engaged in teaching duties in a Commonwealth school in the Northern Territory; or
- (b) a member of the Service who became such a member after 31 December 1976 and before 1 April 1977 and was,

immediately before becoming such a member, employed in the teaching service of New South Wales and engaged in full-time teaching duties in the Australian Capital Territory in connection with the provision of technical and further education, that is to say, education provided by way of a course of instruction or training:

- (i) that is, or that is preparatory to, a course of a kind relevant to a trade, technical or other skilled occupation; or
- (ii) that otherwise meets the educational needs of persons who are not enrolled in a full-time course of education at a primary school, a secondary school or a secondary college.

**relevant date** means:

- (a) in relation to a prescribed teacher referred to in paragraph (a) of the definition of **prescribed teacher**—1 January 1974; and
- (b) in relation to a prescribed teacher referred to in paragraph (b) of that definition—1 April 1977.

**relevant State** means, in relation to a prescribed teacher, the State in the teaching service of which he or she was employed immediately before becoming a member of the Service.

**Service** means the Commonwealth Teaching Service established by the *Commonwealth Teaching Service Act 1972*.

- (2) Where, at any time, in the application to or in relation to a prescribed teacher of this Act, the period of long service leave to which he or she would, but for this section, be entitled, or the amount of pay in lieu of long service leave that would, but for this section, be payable to or in relation to him or her, under this Act is less than the period of leave to which he or she would be entitled, or the amount that would be payable to or in relation to him or her, as the case may be, if the scale of accrual of long service leave that would have been applicable in relation to him or her under the law of the relevant State as in force on the relevant date if he or she had continued to be employed in the teaching service of the relevant State were substituted for the scale of accrual of long service leave

applicable to him or her at that time under this Act, the period of long service leave to which he or she is entitled, or the amount of pay in lieu of long service leave payable to or in relation to him or her, as the case may be, shall be determined in accordance with the first-mentioned scale of accrual.

- (3) This section ceases to apply on the commencement of the amendment of the definition of **public authority of the Commonwealth** in subsection 4(1) of this Act by the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

## 26 Regulations

The Governor-General may make regulations, not inconsistent with this 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 this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can



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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Long Service Leave (Commonwealth Employees) Act 1976	192, 1976	20 Dec 1976	20 Dec 1976 (s 2)	
Australian National Railways Amendment Act 1978	9, 1978	1 Apr 1978	1 Mar 1978 (s 2)	—
Commonwealth Employees (Redeployment and Retirement) Act 1979	52, 1979	14 June 1979	Sch: 14 June 1979 (s 2(1))	—
Australian Federal Police (Consequential Amendments) Act 1979	155, 1979	28 Nov 1979	Sch: 19 Oct 1979 (s 2(1))	—
Long Service Leave (Commonwealth Employees) Amendment Act 1981	6, 1981	13 Mar 1981	13 Mar 1981 (s 2)	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	s 116: 30 Sept 1983 (s 2(2) and gaz 1983, No S222)	—
Australian National Railways Commission (Transitional Provisions and Consequential Amendments) Act 1983	141, 1983	22 Dec 1983	s 24: 17 Feb 1984 (s 2)	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s 143: 1 Oct 1984 (s 2(4) and gaz 1984, No S383)	—
Public Service and Statutory Authorities Amendment Act 1985	166, 1985	11 Dec 1985	s 36–39: 1 Apr 1986 (s 2(6) and gaz 1986, No S134)	—

*Long Service Leave (Commonwealth Employees) Act 1976*

47

Compilation No. 20

Compilation date: 30/3/18

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Australian Airlines (Conversion to Public Company) Act 1988	6, 1988	9 Mar 1988	s 68: 9 Mar 1988 (s 2(1))	—
Industrial Relations (Consequential Provisions) Act 1988	87, 1988	8 Nov 1988	Sch 2: 1 Mar 1989 (s 2(2))	—
A.C.T. Self-Government (Consequential Provisions) Act 1988	109, 1988	6 Dec 1988	s 23 and Sch 5: 11 May 1989 (s 2(3) and gaz 1989, No S164) Sch 5: 1 July 1994 (s 21 of Act No 92, 1994)	s 23
<b>as amended by</b>				
Australian Capital Territory Government Service (Consequential Provisions) Act 1994	92, 1994	29 June 1994	s 21: 1 July 1994 (s 2(1) and gaz 1994, No S256)	—
Government Business Enterprises (Miscellaneous Reforms) Act 1988	123, 1988	14 Dec 1988	s 21: 14 Dec 1988 (s 2(1))	—
Industrial Relations Legislation Amendment Act (No. 2) 1990	108, 1990	18 Dec 1990	s 26: 1 Jan 1990 (s 2(3))	—
Industrial Relations Legislation Amendment Act (No. 3) 1991	7, 1992	15 Jan 1992	s 37: 15 Jan 1992 (s 2(1))	—
Industrial Relations Legislation Amendment Act (No. 2) 1992	215, 1992	24 Dec 1992	s 12–14: 21 Jan 1993 (s 2(3))	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 71): 21 Jan 1993 (s 2(2)) Sch 5 (items 76–78): 25 Oct 1996 (s 2(1))	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 19 (items 26, 27): 25 Nov 1996 (s 2(1))	—
Australian National Railways Commission Sale Act 1997	96, 1997	30 June 1997	Sch 4 (item 6): 1 Nov 2000 (s 2(5) and gaz 2000, No S562)	—
Parliamentary Service (Consequential Amendments) Act 1997	189, 1997	7 Dec 1997	Sch 1 (item s 6, 7): 5 Dec 1999 (s 2)	—
<b>as amended by</b> Parliamentary Service Act 1999	145, 1999	11 Nov 1999	Sch 1: 5 Dec 1999 (s 2)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 557–566): 5 Dec 1999 (s 2(1), (2))	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	Sch 2 (item 33) and Sch 3 (items 20, 26, 34): 2 July 2000 (s 2(1) and gaz 2000, No S328)	Sch 3 (items 20, 26, 34)
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Sch 2 (items 64, 65): 19 Apr 2001 (s 2(1))	—
Parliamentary Service Amendment Act 2005	39, 2005	1 Apr 2005	Sch 2 (item 1): 1 Apr 2005 (s 2)	—

*Long Service Leave (Commonwealth Employees) Act 1976*

49

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Long Service Leave (Commonwealth Employees) Amendment Act 2006	122, 2006	4 Nov 2006	5 Nov 2006 (s 2)	—
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	8, 2008	20 Mar 2008	Sch 1 (item 273): 28 Mar 2008 (s 2(1) item 2)	—
Law Officers Legislation Amendment Act 2008	40, 2008	24 June 2008	Sch 1 (items 3–5): 25 June 2008 (s 2)	Sch 1 (item 5)
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 8 (items 98–100): 1 July 2009 (s 2(1) item 24)	—
Long Service Leave Legislation Amendment (Telstra) Act 2009	110, 2009	16 Nov 2009	Sch 1 (items 1, 2): 23 Nov 2009 (s 2)	—
Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011	170, 2011	4 Dec 2011	Sch 3 (item 4): 15 Feb 2012 (s 2(1) item 2)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 85) and Sch 6 (items 44–46): 22 Sept 2012 (s 2(1) items 2, 37)	Sch 6 (item 45)
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 57, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 1 (item 21): 10 Mar 2016 (s 2(1) item 2)	—
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 1 (item 15): 20 Sept 2017 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Treasury Laws Amendment (2018 Measures No. 1) Act 2018	23, 2018	29 Mar 2018	Sch 1 (items 56, 75–79): 30 Mar 2018 (s 2(1) items 7, 9)	Sch 1 (items 75–79)

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 6: 27 Mar 2006 (r 2(b))	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s. 3 .....	rep. No. 136, 2012
s. 4 .....	am. Nos. 52 and 155, 1979; No. 6, 1981; No. 166, 1985; Nos. 6 and 109, 1988; No. 215, 1992; No. 43, 1996; No. 189, 1997 (as am. by No. 145, 1999); No. 146, 1999; No. 136, 2012
ss. 6, 7.....	am. No. 166, 1985; No. 109, 1988
s. 8A .....	ad. No. 7, 1992
s. 9 .....	rs. No. 215, 1992; No. 146, 1999
s. 9A .....	ad. No. 215, 1992 rep. No. 146, 1999
s. 9A .....	ad. No. 6, 1981 renum. No. 43, 1996
s. 9B (prev. s. 9A).....	am. No. 43, 1996; No. 189, 1997 (as am. by No. 145, 1999); No. 39, 2005; No. 170, 2011
s. 10 .....	am. No. 9, 1978; No. 155, 1979; No. 6, 1981; No. 141, 1983; Nos. 109 and 123, 1988; No. 108, 1990; No. 43, 1996; No. 96, 1997; No. 9, 2000; No. 40, 2008; No 4, 2016
s. 11 .....	am. No. 6, 1981; No. 166, 1985; No. 109, 1988; No. 43, 1996
s. 12 .....	am. No. 61, 1981; No. 87, 1988; No. 215, 1992; Nos. 43 and 60, 1996; No. 146, 1999; No. 10, 2001; No. 54, 2009; No 164, 2015
s. 13 .....	am No 43, 1996; No 93, 2017
s. 14 .....	am No 43, 1996
s. 15 .....	am. No. 87, 1988; No. 60, 1996; SLI 2006 No. 50; No. 8, 2008; No. 54, 2009
ss. 16–21 .....	am. No. 43, 1996
s. 22 .....	am. No. 63, 1984
s. 23 .....	am. No. 43, 1996
s. 24 .....	am. No. 43, 1996; No 23, 2018
s. 24A .....	ad. No. 109, 1988 exp 1 July 1994 (s 24A(3))
s. 25 .....	rep. No. 136, 2012

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Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 25A .....	ad. No. 122, 2006 rep. No. 110, 2009
Schedule 1 .....	ad. No. 122, 2006 rep. No. 110, 2009

## Endnotes

### Endnote 5—Miscellaneous

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#### **Endnote 5—Miscellaneous**

The *Long Service Leave (Commonwealth Employees) Act 1976* is affected by sections 26 and 32 of the *Qantas Sale Act 1992* (No. 196, 1992), section 15 of the *Snowy Mountains Engineering Corporation Limited Sale Act 1993* (No. 54, 1993) and sections 15–21 of the *CSL Sale Act 1993* (No. 88, 1993).