



CLERKS (LONG SERVICE LEAVE) (ACT) AWARD 2000

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1. AWARD TITLE

The title of this award is the Clerks (Long Service Leave – A.C.T.) Award 2000.

3. PARTIES BOUND AND INCIDENCE OF AWARD

3.1 This award as to the Australian Capital Territory (including the Territory accepted by the Commonwealth in pursuance of the Jervis Bay Territory Acceptance Act, 1915), shall be binding upon members of the employers' organizations named hereunder in respect of each and every person employed by them in the classifications set out in the Clerks (A.C.T.) Award 1998, and upon Australian Municipal, Administrative, Clerical and Services Union, its officers and members.

Confederation of A.C.T. Industry
Australian Industry Group
Master Builders Association of the A.C.T.

4. COMMENCEMENT DATE OF AWARD AND PERIOD OF OPERATION

This award comes into force from 18 August 2000 and shall remain in force for a period of 12 months.

5. ENTITLEMENT TO LEAVE

5.1 An employee is entitled to long service leave with pay in respect of service with the employer as provided in this award.

5.2 Entitlement

5.2.1 Subject to clause 5.2.5, an employee is entitled to the amount of long service leave as follows:

5.2.1(a) Initial Entitlement

An employee who has completed fifteen years service with an employer is entitled to thirteen weeks long service leave.

5.2.1(b) Subsequent Entitlement

5.2.1(b)(i) In respect of each ten years service with the employer completed since the employee last became entitled to long service leave, eight and two-thirds weeks long service leave; and

5.2.1(b)(ii) On the termination of the employee's employment or his/her death, in respect of the number of years' service with the employer completed since the employee last became entitled to an amount of long service leave, a proportionate amount on the basis of thirteen weeks for fifteen years service.

5.2.2 If an employee has completed at least ten but less than fifteen years service with an employer and whose employment is terminated:

5.2.2(a) by the employer for any cause other than serious and wilful misconduct; or

5.2.2(b) by the employee on account of illness, incapacity or domestic or any other pressing necessity where such illness, incapacity or necessity is of such nature as to justify such termination; or

5.2.2(c) by the death of the employee, a proportionate amount on the basis of thirteen weeks for fifteen years service.

5.2.3 In the case of an employee who has completed at least ten but less than fifteen years' service with the employer and whose employment is terminated by the employee, other than as provided in 5.2.2(b) and 5.2.2(c), a proportionate amount on the basis of thirteen weeks for fifteen years' service.

5.2.4 Long service leave will be granted and taken and, except as permitted by this award, payment in lieu will not be made or accepted.

5.2.5 In the case of an employee whose service with an employer began before 11 May, 1964, and whose service would entitle him/her to long-service leave under this award, the amount of long-service leave to which such employee will be entitled will be the sum of the following amounts:

5.2.5(a) an amount calculated on the basis of thirteen weeks for twenty years' service in respect of:

5.2.5(a)(i) the period of the employees service before 11 May, 1964; and

5.2.5(b) an amount calculated on the basis of thirteen weeks for fifteen years' service in respect of:

5.2.5(b)(i) the period of the employees service on and from 11 May 1964.

6. PAYMENT FOR PERIOD OF LEAVE

6.1 Rate of pay for long service leave

6.1.1 The rate of payment that an employee on leave will be entitled to will be, in the case of a full-time employee, their actual rate of pay.

6.1.2 The actual rate of pay is the total amount an employee would receive if he/she were performing his/her ordinary hours of work and shall not include overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances and any other extraneous payment of a like nature.

6.1.3 In cases where the actual rate of pay varies from week to week as a result of a system of payment by results or other piece work or bonus systems the rate of payment will be calculated by averaging the actual rates of pay, as defined above for each week over the previous three month period.

6.2 Method of Payment

6.2.1 Payment must be made in one of the following ways:

6.2.1(a) In advance for the whole of the period when the employee commences the period of leave, at the rate calculated in accordance with clause 6.1; or

6.2.1(b) At the same time as payment would have been made if the employee had remained on duty, in which case payment wages must be paid by electronic funds transfer into the employee's bank or approved credit union account.

6.2.1(c) In any other way agreed between the employer and the employee.

6.3 Variation to rate of pay whilst on long service leave

If during the period of leave any award variation occurs which had the employee been at work would have resulted in a change in his/her actual rate of pay (as defined in clause 6.1) the rate of payment to which an employee on leave shall be entitled will be, as from the date upon which such change would have been operative, such changed rate and if payment has been made in advance to any employee in respect of long service leave the employer will, upon the employee's return to duty, adjust such advance payment to accord with such changed rate of pay to the extent to which the changed rate is applicable.

7. TAKING LONG SERVICE LEAVE

7.1 Time of taking leave

7.1.1 Once an employee becomes entitled to long service leave the employer will grant a request for leave as soon as practicable having regard to the needs of the workplace or subject to clause 7.2, at such time or times as may be agreed between the employer and the employee.

7.1.2 Subject to the provisions of clause 5.2.2 of this award, an employer will not be required to grant an employee leave to which the employee has become entitled pursuant to this award until the amount of leave to which the employee has become entitled equals thirteen weeks in respect of his/her first period of entitlement and eight and two-thirds weeks in respect of any subsequent period of entitlement.

7.2 Notice to take leave

Unless otherwise agreed between the employer and employee, the employer must give an employee at least twenty-eight days' notice of the date from which his/her leave is to be taken.

7.3 Broken leave

Leave shall be granted and taken in one continuous period. The employer and employee may agree that long service leave be taken in not more than three separate periods in respect of the first thirteen weeks entitlement, and in not more than two separate periods in respect of any subsequent period of entitlement.

7.4 Holidays and annual leave

The long service leave prescribed by this award is exclusive of annual leave but is inclusive of all other holidays occurring during the taking of any period of long service leave.

7.5 Payment on termination for leave not taken

7.5.1 Where the employment of an employee is terminated otherwise than by his/her death and any long-service leave:

- to which the employee was entitled has not been taken; or
- accrues to the employee upon such termination the employer shall forthwith pay to the employee in full the amount in respect of such leave calculated as at that date of the termination in the manner set out in clause 6.1 less any amount already paid to the employee in respect of that leave.

7.5.2 Where an employee dies and any long-service leave:

- to which the employee was entitled has not been taken; or
- accrues upon termination of the employment by reason of his death the employer shall upon request by the employee's personal representative pay the employee's personal representative in full the amount in respect of such leave calculated as at the date of the death of the employee in the manner set out in clause 6.1 less any amount already paid to the employee in respect of that leave.

7.6 Long Service Leave in Advance

7.6.1 An employer may agree with an employee to allow long service leave to such employee before the right has accrued. Where leave is taken in advance, the employee is not entitled to any further leave or to payment in lieu thereof for the period in respect of which such leave was taken before it accrued and became due.

7.6.2 If long service leave has been granted to an employee pursuant to clause 7.6.1 and the employment is subsequently terminated, the employer may deduct from whatever monies are payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted leave to which the employee was not entitled at the date of termination of his/her employment.

8. CALCULATING SERVICE**8.1 Service entitling to leave**

8.1.1 The service of an employee with the employer means the period during which the employee has served his/her employer under an unbroken contract of employment. The contract of employment is not broken by reason only of any interruption or determination, if the interruption or determination:

- 8.1.1(a)** has been made by the employer with the intention of avoiding any obligation imposed by this award; or
- 8.1.1(b)** has arisen directly or indirectly from an industrial dispute, if the employee returns to duty with the same employer in accordance with the terms of settlement of the dispute; or
- 8.1.1(c)** has been made by the employer by reason of slackness of trade, if the employee is re-employed by the same employer within six months of such interruption or determination; or

- 8.1.1(d)** has been made by the employer for any other reason if the employee is re-employed by the employer within two months of such interruption or determination.
- 8.2** The period during which the employment has been interrupted or determined will not, except when due to the reasons referred to in 8.1.1(a), be taken into account in calculating the period of service.
- 8.3** Where an employee has entered or enters into a contract of employment with the employer within a period of twelve months after the completion of an apprenticeship with the employer the period of apprenticeship will be taken into account for the purpose of calculating the period of the employees service with the employer under that contract of employment.
- 8.4** Any period of service as a member of the naval, military or air forces (other than as a member of the permanent forces) of the Commonwealth of Australia, will be deemed to be service with the employer by whom the employee concerned was last employed before the employee commenced to serve as such member.

9. TRANSMISSION OF BUSINESS

- 9.1** If a business is transmitted from an employer (in this clause called **the transmittor**) to another employer (in this clause called **the transmittee**) and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:
- 9.1.1** the continuity of the service of the employee is not broken by reason of such transmission; and
- 9.1.2** the period of service, which the employee has had with the transmittor or any prior transmittor, shall be deemed to be service of the employee with the transmittee.
- 9.2** For the purpose of this clause **business** includes trade, process, business or occupation and includes part of any such business, and **transmission** includes transfer conveyance assignment or succession whether by agreement or by operation of law, and **transmitted** has a corresponding meaning.

10. SERVICE WITH RELATED COMPANIES

Where, over a continuous period, an employee has been employed by two or more companies each of which is a related company within the meaning of sections 46-50 of the Corporations Law the employee is entitled to long service leave as if he had, during the whole of the period of service, been employed by the company by which he is employed at the date at which his long service leave entitlement accrued. Provided that an employee shall not be entitled to leave or payment in lieu thereof more than once in respect of any period of service.

11. BENEFITS TO BE BROUGHT INTO ACCOUNT

11.1 Any long-service leave allowed or payment in lieu made before 1 February 1978 will be taken into account and will be deemed to have been leave granted and taken in satisfaction of leave due under this award;

11.1.1 In the case of leave with pay, to the extent of the period of such leave; and

11.1.2 In the case of payment in lieu, to the extent of a period of leave equivalent to the amount of the payment at the date leave was granted.

12. LEAVE RESERVED

Leave is reserved to any party to apply for inclusion of provisions regarding:

- Part-time workers;
- Casual workers.