

5 June 2001

Dear Client

## **A BRIEFING PAPER ON: Changes to Queensland Long Service Leave (LSL)**

### **Background**

The Queensland Parliament has amended our State's Industrial Relations Act to give effect to a Review conducted in 2000 by the Queensland Industrial Relations Commission (QIRC) into the entitlements associated with Long Service Leave (LSL).

THESE CHANGES CAME INTO EFFECT ON THE 3<sup>RD</sup> OF JUNE 2001.  
(Note this date is critical for implementation purposes.)

The QIRC Review of 27 June 2000 recommended that:

- There be no increase in entitlements accruing from year to year but Long Service Leave can be taken as Leave after 10 years (not 15 years as now) continuous service subject to a transitional period.
- Access to LSL be pro rata after 7 years but in restricted circumstances.
- Cashing out be permitted after 10 years (See our advice later on in this Briefing on the limitations on this item).
- Part time employees be able to take payment or leave by applying the formula currently in place for Casuals or where there is a mix of full time, part time and casual employment.
- Transitional Period to assist employers meet the associated costs.

<p><b>IT IS EXTREMELY IMPORTANT TO NOTE THAT THE YEARLY ACCRUAL FOR LSL OF 0.86667 OF A WEEK HAS NOT BEEN INCREASED.</b></p>
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### **Some initial Questions and Answers**

**(1) *My employees are subject to a Federal Award – are they covered?***

Most Federal Awards operating in Queensland either refer directly to the Queensland laws on LSL or are silent on the subject, thus deferring to the primacy of Queensland's Laws on this topic. If in doubt ring Employer Services Pty Ltd.

**(2) *What is Pro-rata entitlement?***

Pro-rata entitlement is an entitlement paid out in cash or by EFT etc on resignation or termination. It is available to employees after 7 years continuous service but only when the employee terminates his or her employment due to illness; incapacity; domestic or other pressing necessity or on death. However, employees can not claim a pro-rata entitlement if their employment has been terminated due to their conduct, capacity or performance related reasons. Termination due to redundancy would qualify for pro-rata payment.

An employee who has 7 years continuous service as at the 3<sup>rd</sup> of June 2001 and who qualifies under point 7, is entitled to pro-rata payment upon termination at any time after the 3<sup>rd</sup> of June 2001.

Note: Receiving “Pro-rata” is distinct from taking paid leave and returning to work (See response to Q4).

**(3) *Are the terms “illness, incapacity, domestic, or other pressing necessity” defined?***

No. We took this up with Government but no legislative clarification or criteria have been provided. Reliance will be placed on precedents arising from similar laws in New South Wales and development of case law in Queensland. Each claim by an employee which relies on this criteria will have to be assessed on a “case by case” basis.

Resigning to take up a ‘better paid’ job would not seem to qualify under any of these circumstances.

Employer Services Pty Ltd has identified the potential problems for our subscribers and clients and is building specific precedents to assist interpretations. If in doubt contact us.

**(4) *The new laws refer to the “taking of leave” what does that mean?***

‘Taking of Leave’ refers to where an employee who has 10 years service is granted leave by the employer and is returning to work after that leave.

Note: The distinction between this question and question 2 are critical to applying the new laws.

**(5) *Previously, if an employee was dismissed for ‘misconduct’, pro-rata payment was lost, does that aspect of the law still apply?***

The term misconduct has been omitted. The refusal to pay is now based on what the QIRC determined, which was –

*“it seems to us entirely appropriate to march away from the distinction between serious misconduct and misconduct simpliciter and to deny entitlement where there is a valid reason for the dismissal related to the employee’s conduct, capacity and performance”.*

**(6) *A “transitional period” has been mentioned. What is it and how does that apply?***

The transitional period (reduction of Service by 1/3) will be the time employers have to phase in the new changes to Long Service Leave. This time has been granted as the QIRC were concerned about a ‘distortion to cash flows’ without a transitional period.

Therefore all service as at 3<sup>rd</sup> of June 2001 is reduced by 1/3 but entitlements ie., amounts of leave accrued are not as the QIRC rejected an increase in the quantity of LSL. The QIRC did not intend that actual accruals be diminished.

Our explanation of the recalculations show how this is to worked out.

**(7) *How is the pro rata payment for LSL after 7 years but before 10 years to apply if there is a valid reason for dismissal? (see answer to Questions 2 and 3).***

Employees or their legal personal representatives are only eligible for pro-rata payment if any of the following criteria are satisfied:

- Employee's death
- Employee terminates employment because of their illness or incapacity.
- Employee terminates employment because of a domestic or other pressing necessity.
- Employee unfairly dismissed, the QIRC have to determine this in a formal hearing, see note below.
- Employee dismissed due to operational reasons ie., redundancy, effectively in all other circumstances where the employer terminates other than for conduct, performance or capacity.

**Note: For Employers under Federal Awards, proceedings could be in the Australian Industrial Relations Commission.**

**(8) *My business grants 13 weeks after 10 years service, am I affected?***

No, not for the transitional arrangements but the 7-10 years pro rata arrangements apply unless your benefits are more generous. If in doubt check with Employer Services.

**(9) *My employee has 15 years service do I recalculate?***

No, that employee is entitled to 13 weeks.

**(10) *You have referred to "Cashing out" LSL how does this work?***

The QIRC recommended 'cashing out' of LSL at 10 years service but the Parliament has effectively limited that recommendation for the time being.

Employees are permitted to cash out LSL only in the following circumstances:

- If the Industrial Award, Certified Agreement, QWA, AWA, Industrial Agreement allows;
- QIRC orders on an employee application based on compassionate grounds or financial hardship.

**NOTE: These circumstances relate only to service at 10 years or thereafter and as if the Employee was taking leave, not for pro rata or resignation after 10 years.**

**(11) *When should I make the recalculation for service of 2/3?***

The Legislation refers to only 2/3 of an employee's continuous service completed by commencement date of the Act amendments counting as continuous service. Refer to the transitional scale attached to this Briefing. We recommend that the recalculations occur as soon as possible to avoid confusion about future entitlements.

**(12) *Will I make the same recalculations for casuals and part timers.***

Yes.

**(13) *Is service for pro rata purposes recalculated?***

No.

**(14) *Are any entitlements lost?***

No, and please refer to TRANSITIONAL SCALE.

**(15) *What happens to employees who commence employment after 3<sup>rd</sup> of June 2001?***

They are not subject to any recalculation process and accrue LSL on the basis of 0.86667 of a week for each completed year of employment.

The criteria for entitlement to pro rata payment after 7 years continuous service but before 10 years continuous service applies. Long Service Leave can be taken as paid leave after 10 years continuous service.

**(16) *If an employee takes 8.6667 weeks after 10 years continuous service what happens if it means part of a day for return to work? ie., 0.6667 of a 38 hour week is 25.33 hours.***

Just that, although mutual agreement might allow a practical/sensible time to return to work

**(17) *Can employees take less than their full entitlement when applying for leave if the employer agrees?***

Yes, the Act in Section 45 states:

- “(2) An employer and employee may agree when the employee is to take LSL.
- (3) If the employee and employer can not agree, the employer may decide when the employee is to take leave by giving the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks LSL.”

**(18) What changes have been made in the way part-timers can take their LSL?**

The Act, Section 48 extends to regular part-time employees the capacity to take LSL in the form of its full time equivalent by agreement.

That formula is:

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

An example: An employee who has worked 15 600 ordinary working hours over 10 year period and is being paid an hourly rate of \$12.00 is entitled to be paid:

$$\frac{15\ 600}{52} \times \frac{8.6667}{10} \times \$12$$

$$= \$3120.00$$

(Note this formula applies to Casuals also).

**CONCLUDING COMMENTS**

This advice is intended to assist Employer Services Clients in -

- a) Recalculating Service as at 3rd of June 2001 and
- b) Calculating Long Service leave already accrued as at 3rd of June 2001.
- c) Applying the new laws applicable to pro-rata entitlements between 7-10 years.

Clients are advised to confirm all details before allowing LSL or paying out entitlements. It is to be expected case law will develop over the terms 'incapacity' or domestic or other 'pressing necessity' in particular. The precedents arising from developing 'case law' may cause our advice to be altered from time to time.

To determine the actual LSL accrued when part of the year is involved, we suggest the following calculations be applied. Please refer to Table 2A and 2B.

## **General Rules**

1. **Accrue all years = 365 days**
2. **Accrue all months = 30 days**
3. **Convert total service to days**
4. **Multiply by 2/3 = Recalculated service**

Example: Actual Service to 3 June 2001 is 11 years 2 months and 14 days.

11 years	=	4015 days
2 months	=	60 days
	=	14 days
Total	=	4089 days

Reduce by 1/3 = 2726 days

Convert to years = 7 years 5 months 21 days

Therefore additional years to be worked (until 10 years) is 2 years 6 months and 9 days.

## **Glossary**

- Leave**            Approved paid time off work with a return to work date.
- Service**        Time spent at work (ie., length of continuous employment).
- Pro Rata**       Payment upon termination with at least 7 years service.

**Table 1: Access to Long Service Leave for Employees Continuing Employment**

1	2	3	4	5	6	7
Prior service (years)	Leave (weeks) already accrued before implementation	Service reduced by a third to allow phasing in	Additional years of service that must be worked before leave can be accessed	Total years of service worked before leave can be taken	Leave (weeks) that would be accrued after implementation	Total leave (weeks) entitlement when qualifying period reached
0	0.000	0.000	10.000	10.000	8.6667	8.667
1	0.867	0.667	9.333	10.333	8.08892	8.956
2	1.733	1.333	8.667	10.667	7.51114	9.244
3	2.600	2.000	8.000	11.000	6.93336	9.533
4	3.467	2.667	7.333	11.333	6.35558	9.822
5	4.333	3.333	6.667	11.667	5.7778	10.111
6	5.200	4.000	6.000	12.000	5.20002	10.400
7	6.067	4.667	5.333	12.333	4.62224	10.689
8	6.933	5.333	4.667	12.667	4.04446	10.978
9	7.800	6.000	4.000	13.000	3.46668	11.267
10	8.667	6.667	3.333	13.333	2.8889	11.556
11	9.533	7.333	2.667	13.667	2.31112	11.844
12	10.400	8.000	2.000	14.000	1.73334	12.133
13	11.267	8.667	1.333	14.333	1.15556	12.422
14	12.133	9.333	0.667	14.667	0.57778	12.711
15	13.000	10.000	0.000	15.000	0	13.000

**Table 2A: Calculation of Entitlement (pro-rata)**

Entitlement on Basis of 13 Weeks Leave for 15 Years Continuous Service												
Entitlement for Completed Years and Months of Service												
Completed Years	Completed Months											
	0	1	2	3	4	5	6	7	8	9	10	11
0	-	0.0722	0.1444	0.2167	0.2889	0.3611	0.4333	0.5055	0.5778	0.6500	0.7222	0.7944
1	0.8667	0.9389	1.0111	1.0834	1.1556	1.2278	1.3000	1.3722	1.4445	1.5167	1.5889	1.6611
2	1.7333	1.8055	1.8777	1.9500	2.0222	2.0944	2.1666	2.2388	2.3111	2.3833	2.4555	2.5277
3	2.600	2.6722	2.7444	2.8167	2.8889	2.9611	3.0333	3.1055	3.1778	3.2500	3.3222	3.3944
4	3.4667	3.5389	3.6111	3.6834	3.7556	3.8278	3.9000	3.9722	4.0445	4.1167	4.1889	4.2611
5	4.3333	4.4055	4.4777	4.5500	4.6222	4.6944	4.7666	4.8388	4.9111	4.9833	5.0555	5.1277
6	5.2000	5.2722	5.3444	5.4167	5.4889	5.5611	5.6333	5.7055	5.7778	5.8500	5.9222	5.9944
7	6.0667	6.1389	6.2111	6.2834	6.3556	6.4278	6.5000	6.5722	6.6445	6.7167	6.7889	6.8611
8	6.9333	7.0055	7.0777	7.1500	7.2222	7.2944	7.3666	7.4388	7.5111	7.5833	7.6555	7.7277
9	7.8000	7.8722	7.9444	8.0167	8.0889	8.1611	8.2333	8.3055	8.3778	8.4500	8.5222	8.5944
10	8.6667	8.7389	8.8111	8.8834	8.9556	9.0278	9.1000	9.1722	9.2445	9.3167	9.3889	9.4611
11	9.5333	9.6055	9.6777	9.7500	9.8222	9.8944	9.9666	10.0388	10.1111	10.1833	10.2555	10.3277
12	10.400	10.4722	10.5444	10.6167	10.6889	10.7611	10.8333	10.9055	10.9778	11.0500	11.1222	11.1944
13	11.2667	11.3389	11.4111	11.4834	11.5556	11.6278	11.7000	11.7722	11.8445	11.9167	11.9889	12.0611
14	12.1333	12.2055	12.2777	12.3500	12.4222	12.4944	12.5666	12.6388	12.7111	12.7833	12.8555	12.9277
15	13.0000	-	-	-	-	-	-	-	-	-	-	-

**Table 2B**

Entitlement for Completed Weeks and Days of Service							
Completed Weeks	Completed Days						
	0	1	2	3	4	5	6
0	-	0.0024	0.0047	0.0071	0.0095	0.0119	0.0142
1	0.0167	0.0191	0.0214	0.0238	0.0262	0.0286	0.0309
2	0.0333	0.0357	0.0380	0.0404	0.0428	0.0452	0.0475
3	0.0500	0.0524	0.0547	0.0571	0.0595	0.0619	0.0642
4	0.0667	0.0691	0.0714	0.0738	-	-	-