LONG SERVICE LEAVE IN AUSTRALIA:
TOWARDS A NATIONAL MINIMUM STANDARD
CONTENTS

1. INTRODUCTION .......................................................................................................................2

2. BACKGROUND..........................................................................................................................4

  2.1 Long Service Leave Standards.............................................................................................. 4
  2.2 Why a National Minimum Long Service Leave Standard? .................................................... 5

3. THE CONTEMPORARY LABOUR MARKET .....................................................................6

4. OPTIONS FOR A NATIONAL MINIMUM LONG SERVICE LEAVE STANDARD ....10

  4.1 Qualifying Periods of Service ............................................................................................... 10
  4.2 Quantum of the Leave Entitlement ....................................................................................... 12
  4.3 Pro Rata Payment on Termination ....................................................................................... 14
  4.4 Access by Casuals to Long Service Leave ......................................................................... 16
  4.5 What Service Counts For Long Service Leave .................................................................. 18
  4.6 Ordinary Rate of Pay ........................................................................................................ 20
  4.7 Calculation of Leave Entitlements Where Hours Vary or Employment Status Changes ....... 22
  4.8 Cashing Out Long Service Leave Entitlements ................................................................... 24
  4.9 Taking of Leave .................................................................................................................. 26
  4.10 Notice Requirements ...................................................................................................... 27
  4.11 Public Holidays ............................................................................................................... 28

5. QUESTIONS FOR DISCUSSION...........................................................................................29

REFERENCES.................................................................................................................................30

ATTACHMENT 1 ...........................................................................................................................31

LONG SERVICE LEAVE ENTITLEMENTS IN AUSTRALIA ..........................................................31
1. INTRODUCTION

Long service leave (LSL) is a uniquely Australian entitlement with its origins in the colonial public services of SA and Victoria. Historically, it was awarded to employees who had provided long service in the colonies to enable them sufficient time to visit the United Kingdom. As a consequence, Australia is the only country where there is a legislated right to LSL. That said, in some countries, the amount of annual leave an employee is entitled to is linked to their length of service.¹

Over time, a number of rationales have underpinned the provision of LSL – these being: to provide employees with an extended leave of absence in order to renew their energies; to reward long and faithful service with an employer; and to reduce labour turnover.²

This paper commences from the assumption that LSL remains a valued entitlement for employees and that the rationales underpinning this entitlement remain relevant today. As examined in section 3 of this paper, job mobility data indicates that there is no evidence of any long-term trend decrease in the proportion of long duration (over ten years) jobs or a decline in average job tenure. Thus, whilst only approximately one quarter of employees have worked for a single employer for 10 or more years and are therefore entitled to LSL, this proportion has not decreased over the past decades.

The purpose of this paper is to therefore to discuss possibilities for a national minimum LSL standard. To facilitate this discussion, this paper is structured around the following components of a LSL standard:

1. qualifying periods of service;
2. the quantum of initial and subsequent leave entitlements;
3. pro rata payment on termination;
4. access by casuals to LSL;
5. what service counts for the accrual of LSL;
6. the definition of ordinary pay;
7. calculation of the LSL payment where hours vary or employment status changes;
8. cashing out of LSL entitlements;
9. the taking of LSL;
10. notice requirements; and
11. the effect of public holidays falling during the period of leave.

For ease of reference, the paper discusses each of these components as a stand-alone LSL standard. The paper therefore identifies a number of options and highlights issues for consideration in relation to each component.

As the purpose of this paper is to facilitate discussion about the possibility of a national minimum standard and the nature of such a standard, section 5 proposes a number of questions for discussion.

This paper also maintains the administration of LSL with the states and territories.

Portability of long service leave

At present, none of the states and territories provide for portability of LSL in relation to general private sector LSL entitlements (that is, allowing an employee to accrue LSL despite being

¹ In Greece, for example, annual leave increases by one day for each additional year of service up to 26 days (for employees working a 6 day week) or 22 days (for those working a 5 day week).
employed over time with more than one employer).\(^3\) However, each jurisdiction provides LSL legislation specific to the building and construction industries, which provides for portability of LSL. There are also similar schemes operating in some jurisdictions in the maritime industry, coal mining and contract cleaning.\(^4\)

Generally speaking, portable LSL schemes are designed to recognise the cyclical and transient nature, in addition to the project/contract based structure, of these industries. Due to the nature of these sectors, employees are highly mobile and are therefore unlikely to be able to accrue LSL due to a lack of continuous service.

LSL is also portable within state public services, in addition to between different levels of government, both intra and inter state (ie. between federal, state and local government public services). The rationale for this is not so much the structure of the industry but rather recognition of the worth of a career public service.

There are many issues surrounding the question of whether LSL ought to be portable for all private sector employees. Given the extent of these issues, and the fact that this paper is focussed on the question of a national minimum standard, this paper does not examine the issue of portability of LSL.

\(^3\) There is, however, a private member’s bill before the ACT Parliament which will provide portability to all private sector employees not already covered by schemes applying to the building and construction or the cleaning industries. This Bill has been referred to the Standing Committee on Legal Affairs for inquiry and report by 23 September 2003. The ACT Government has yet to endorse this bill. The ACT Government has also released a public discussion paper reviewing private sector LSL in the ACT. This review, which concluded on 9 September 2003, included an examination of the question of portability of LSL.

\(^4\) Long service leave in the coal industry is administered centrally in accordance with three federal statutes; long service leave entitlements in the maritime industry are administered centrally by Australian Maritime Industries Pty Ltd (a company of maritime employers); and long service leave in contract cleaning in the ACT is regulated by the Long Service Leave (Contract Cleaning Industry) Act 198.
2. BACKGROUND

2.1 Long Service Leave Standards

In Australia, LSL is primarily regulated at a state and territory level, either via legislation or state awards. That said, if an employee is engaged under a federal award or agreement, which provides for LSL, then these provisions, will prevail. Most states and territories have LSL-specific legislation with the exception of Queensland, which provides for LSL in its industrial relations legislation. Western Australia (WA) also provides, in addition to its LSL legislation, a general LSL standard\(^5\) which applies to all state award employees.

LSL legislative standards vary between the states and territories: a summary of long service leave entitlements in all states and territories is provided in Attachment 1. Although there is no single consistent standard amongst the states and territories, a number of themes can nonetheless be observed:

- the initial LSL entitlement is most commonly provided after ten years service, with subsequent entitlements available after a further five years service;
- the rate of accrual in most states, for both the initial and subsequent leave entitlements, is 0.86 weeks leave per year of service;
- pro rata LSL on termination is most commonly provided after seven years service;
- the majority of jurisdictions make some reference to the entitlement of casual employees;
- half the jurisdictions count an employee’s absence on any period of paid leave as service;
- where an employee’s hours vary, the majority of jurisdictions provide for the calculation of the entitlement on the basis of the employee’s average weekly hours over the previous 12 months;
- cashing out is permitted in half of the jurisdictions;
- the majority of states and territories require an employer to provide an employee with notice before requiring them to take LSL and most place limits on how LSL may be taken; and
- public holidays extend the period of leave in half of the jurisdictions.

State award entitlements

In all states other than WA, LSL legislation will apply to state award employees. In WA, the *Long Service Leave Act 1958* applies only to those employees not covered by a state award or industrial agreement. As noted, there is a separate LSL standard that applies to all WA state award employees.

Federal award entitlements

For federal award employees, LSL is currently an allowable award matter. It should be noted, however, that the Federal Government has introduced legislation - the Workplace Relations Amendment (Award Simplification) Bill 2002 – which would remove LSL as an allowable award matter. It is also worth noting that LSL is not routinely found in federal awards.

The federal award standard, as handed down by the Commonwealth Conciliation and Arbitration Commission in 1964, is 13 weeks leave for 15 years service, with a further entitlement of eight and two thirds weeks for every additional ten years of service. Pro rata LSL on termination of employment is available after ten years and casual employees are usually not entitled to LSL.

Public service standards

Public service LSL standards vary to a limited degree amongst the states and territories. For example, state public servants can access 13 weeks LSL after ten years service in Victoria, Queensland, SA, the NT and the ACT whilst in WA access to 13 weeks leave is after seven years

\(^5\) Long Service Leave Order 1977.
service. In NSW, state public servants can access two months leave after ten years service.

2.2 Why a National Minimum Long Service Leave Standard?

A consistent philosophy held by all state and territory governments is that fair conditions of employment should be provided to all workers. As outlined in section 3, the changes in the labour market since the introduction of statutory LSL entitlements for private sector employees in the 1950s justify re-visiting existing LSL standards to ensure they continue to provide a fair minimum standard that is relevant to current community standards.

As noted, whilst there is no common LSL standard across the jurisdictions, there are a number of consistent themes. As will be discussed in the remainder of this paper, there are considerable variations in the standard. For example, private sector employees in five jurisdictions are entitled to LSL after 10 years whilst in three jurisdictions employees must wait for 15 years. Adopting national minimum standards will therefore play a role in reducing the extent of differential treatment of employees across borders and between state/territory branches of a single business.

To the extent that components of a minimum standard apply in all jurisdictions, it will help reduce complexities and confusion for those businesses employing staff in more than one state or territory. For example, if all jurisdictions adopt a standard of maximising flexibility in how leave is to be taken. It will therefore also facilitate the harmonisation of industrial relations.

Lastly, it should be noted that national minimum standards exist in relation to annual leave, maternity and parental leave. It is arguable that, given that LSL is legislated for in all states and territories, a national minimum standard should also apply to this entitlement.
3. THE CONTEMPORARY LABOUR MARKET

The contemporary labour market is characterised by a number of features that, to varying degrees, have a bearing on LSL and its adequacy for Australian workers in the 21st century. These features relate to:

- increased work intensification;
- the ever-growing focus on helping employees balance work and family commitments;
- employees’ ability to take their annual leave;
- increased casualisation and declining full time employment;
- job tenure and mobility;
- predicted labour shortages; and
- the protection of employee entitlements.

**Work intensification**

Work intensification in Australia has grown both in terms of employees working harder within each hour spent at work and working longer hours. For example, between 1982 and 2002 the average working hours of full time workers increased from 42 hours to 44 hours per week. Underlying this figure is an increasing number of employees who work 50+ hours per week (up from 20 per cent in 1982 to 30 per cent in 2002). This is contrasted with the experience of other OECD countries where there has been little change or the trend towards reducing full time working hours has continued.6

In addition to working longer hours, there is evidence that Australian employees are working harder within each hour spent at work. For example, data from the 1990’s Australian Workplace and Industrial Relations Surveys indicated that approximately half of the workforce experienced increased work effort, stress levels and the pace of work within the previous 12 months. More recent research into employee attitudes7 confirms that many employees experience the pressures of increased workloads, unrealistic expectations and lack of staff and that they believe this will get worse rather than better.8

As a consequence of work intensification, people believe that things are harder for families9 and for those employees working extended hours (45 hours plus) there is a lack of satisfaction with the balance between work and family.10 In addition, working longer hours is seen as creating occupational health and safety risks, detracting from the quality of work produced and adversely impacting on skill formation.11

The state and territory governments have recognised the importance of addressing work intensification. For example, the governments of Victoria, Queensland, New South Wales, Western Australia, Tasmania and the Northern Territory intervened in the ACTU’s Reasonable Hours test case and argued, amongst other things, that employers should be prohibited from requiring employees to work unreasonable hours.

**Balancing work and family commitments**

One of the most significant developments in industrial relations in recent years has been the increased focus on balancing work and family commitments (and more generally, work and life). In many ways this reflects the changing demographic of the labour market with increased numbers of

---

6 ABS, ‘Longer working hours’, *Australian Social Trends 2003* (Cat. No 4102.0) 119-20.
7 See, for example, Elizabeth Lukin, *Australian Employee Attitudes – Research Analysis 2003* (June 2003).
8 Ibid 5.
9 Ibid 4.
11 Ibid 56-61.
women and therefore both parents working, and an increased growth in the number of single parent families.\textsuperscript{12} The growing focus on work and family can also be linked to the increase in work intensification which, as noted previously, has made it more difficult to manage the competing interests of work and family commitments.

State and territory governments have recognised the significance of this issue and are examining ways in which to improve the balance of work and family commitments in both the public and private sectors. This has included reviewing relevant industrial relations and anti-discrimination legislation to identify impediments to achieving balance, the promotion of initiatives developing work and family strategies and enhancing family friendly practices in the public sector.

The Australian Council of Trade Unions (ACTU), the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AiG) have all lodged applications in the Australian Industrial Relations Commission (AIRC) to vary federal award standards so as to improve the balance between work and family commitments. To this end, ACCI and AiG have, \textit{inter alia}, sought the introduction of long service leave flexibility including longer periods of long service leave at reduced pay.

\textbf{Taking of annual leave}

Recent research conducted by the Australia Institute further highlights the detrimental influence work intensification is having on employees. This research revealed that only 39 per cent of full time employees took all of their annual leave in 2002. Of the 57 per cent of employees who did not take all of their leave, 42 per cent cited work related reasons: 29 per cent were too busy at work and 13 per cent were unable to get time off that suited them.\textsuperscript{13}

Although most employees were unable to take their full leave entitlement, the research also revealed that most employees would prefer extra leave to an equivalent pay rise. This was particularly prevalent amongst workers in the 25-34 age group, which may reflect age-specific characteristics such as a higher likelihood of having a young family.\textsuperscript{14} This data adds further weight to the argument that employees want the opportunity to renew their energies and to better meet their family commitments.

\textbf{Increased casualisation and falling full time employment}

Increased casualisation of the workforce has been a key feature of labour market change in Australia in recent decades: the proportion of Australian employees who are employed casually increased by 11 per cent between 1984 and 2002 such that 27 per cent of employees are now casual.\textsuperscript{15} This has corresponded with an 11 per cent increase in part time employment (up to 29 per cent in 2002) and a fall of 13 percent in the proportion workers who are employed full time, down from 74 per cent in 1988 to 61 per cent in 2002.\textsuperscript{16}

There are also substantial numbers of \textit{long-term} casual employees. In 2001, 55 per cent of casual employees were continuously employed for more than twelve months (the figure was 56 per cent in 1998). Furthermore, 78 per cent of casual employees in 2001 expected to be in the same job in twelve months time (in contrast to 75 per cent in 1998).\textsuperscript{17}

Although Australian Bureau of Statistics (ABS) data indicates that job tenure for casual employees has been stable in recent years – in both 1998 and 2001, five per cent of casuals worked for the

\textsuperscript{12} ABS, ‘Balancing family and work’, \textit{Australian Social Trends} 2003 (Cat. No. 4102.0) 40-1.

\textsuperscript{13} Richard Denniss, \textit{Annual leave in Australia: An analysis of entitlements, usage and preferences} (July 2003) ix.

\textsuperscript{14} Ibid x.

\textsuperscript{15} Defined as employees without paid leave entitlements.

\textsuperscript{16} Above n 10, 6. It should be noted that some employees are counted in both the casual and part time figures.

\textsuperscript{17} ABS, \textit{Forms of Employment} (Cat. No. 6359.0) August 1998 and November 2001.
same employer for more than ten years\textsuperscript{18} – there is research which claims that the average tenure of permanent or casual employees (or both) is increasing.\textsuperscript{19}

According to ABS data, in both 1998 and 2001, eight per cent of casuals were entitled to long service leave.\textsuperscript{20}

There have been moves in recent years to ensure long-term casual employees are not disadvantaged in comparison to their permanent colleagues. For example, in 2001 the AIRC extended parental leave to long-term casual employees. The ACTU is also seeking the extension of redundancy pay to long-term casuals in a test case currently before the AIRC.

**Job tenure and mobility**

Australian research into job stability indicates that there is no evidence of any long-term trend decrease in the proportion of long duration jobs\textsuperscript{21} or a decline in average job tenure.\textsuperscript{22} If anything, there has been an increase in the proportion of long duration jobs (which has been influenced by the increased participation of women in the workforce)\textsuperscript{23} and an increase in average job duration.\textsuperscript{24}

ABS data shows that, over the period 1975\textsuperscript{25} to 2002, the proportion of workers who had been in their job for 10 or more years increased from 21 per cent to 24 per cent. The vast majority of these workers had been with the one employer for between 10 and 20 years, with the minority having been with the one employer for more than 20 years. This is a proportion that has itself remained relatively consistent in the period 1975 to 2002.\textsuperscript{26}

Job mobility\textsuperscript{27} has also remained relatively stable. In 1992, ten per cent of employees were job mobile, increasing to 12 per cent in 2002. Of those who changed jobs in the preceding 12-month period, 42 per cent also changed industry.\textsuperscript{28} Again, this figure has stayed relatively stable, with 40 per cent of employees changing industries in 1998.

**Predicted labour shortages**

Another contemporary development has been the growing focus on predicted labour market shortages in the coming decades due to declining birthrates and the retirement of the baby boomer generation. For example, a recent report by the Boston Consulting Group has predicted that Australia will face a labour shortfall of 500,000 in 17 years.\textsuperscript{29} There is also some acknowledgment that an appropriate response to this challenge would be to ensure that there is an appropriate

\begin{footnotesize}
\begin{enumerate}
\item[]\textsuperscript{18} ABS, *Forms of Employment* (Cat. No. 6359.0) August 1998 and November 2001. Note: these figures have been derived by combining data on self identified casuals and those employees without paid leave who did not identify themselves as casual.
\item[]\textsuperscript{19} Mark Wooden, *The Changing Labour Market and its Impact on Work and Employment Relations* (December 2000) 10. This conclusion was drawn on the basis that the average tenure of a casual employee is much less than a non-casual employee yet average job tenure overall has changed little over time.
\item[]\textsuperscript{20} Above n 18.
\item[]\textsuperscript{22} Above n 19.
\item[]\textsuperscript{23} Above n 21.
\item[]\textsuperscript{24} Above n 19, 18.
\item[]\textsuperscript{25} Statistics on job duration have been collected on a biennial and sometime annual basis by the ABS since 1975.
\item[]\textsuperscript{26} ABS, *Labour Mobility Australia*, February 2002 (Cat. No. 6209.0); Jeff Borland, *Recent Trends in Job Stability and Job Security in Australia* (October 2000) 3.
\item[]\textsuperscript{27} Defined here as the percentage of those persons who changed their employer at least once within the previous year. This figure does not include those employees who merely re-located with their same employer.
\item[]\textsuperscript{28} ABS, *Labour Mobility Australia*, February 2002 (Cat. No. 6209.0).
\item[]\textsuperscript{29} “Australia faces massive labour shortfall: report”, *The Age* (19 June 2003). See also, “BIS Shrapnel predicts labour shortages”, ABC Business News On-line (20 August 2002) where BIS Shrapnel predicts major labour shortages in Australia during the next decade.
\end{enumerate}
\end{footnotesize}
work/life balance for employees and workplace flexibilities that suit both employers and employees so as to make remaining in or returning to work appealing.\textsuperscript{30}

\textit{Protection of employee entitlements}

The issue of protection of employee entitlements has received increasing attention in recent years, particularly within the context of a number of high profile corporate collapses. The federal government’s introduction of the Employee Entitlement Support Scheme in 2000, followed by the replacement General Employee Entitlement and Redundancy Scheme (GEERS) in 2001 highlights this. GEERS currently provides for the payment, amongst other things, of all outstanding LSL entitlements in circumstances where an employer is insolvent and unable to meet their obligations. It should be noted, however, that GEERS is not based in legislation and therefore operates at the discretion of the federal government.

\textsuperscript{30}See, for example, Australian Human Resources Institute, \textit{Submission to the Senate inquiry into current and future skill needs} (February 2003) 1.
4. OPTIONS FOR A NATIONAL MINIMUM LONG SERVICE LEAVE STANDARD

As noted earlier, the question of a national minimum LSL standard requires consideration of a number of components that collectively make up LSL. This section of the paper therefore discusses the nature of each of these components and how the standards apply in different jurisdictions. This section also outlines options for a minimum standard.

4.1 Qualifying Periods of Service

This refers to the length of service required before an employee can access either their initial leave entitlement or any subsequent period of leave. Although the issue of qualifying periods is discussed separately from the quantum of the entitlement, the linkage between the two must be acknowledged. Any decision to change qualifying periods must therefore give consideration to the associated quantum of leave.

Broadly speaking, since the introduction of LSL as a minimum standard for all employees, the qualifying period of service has fallen from 20 years (in the 1950s) to 15 years (in the 1960s) to the situation now where five of the eight states and territories provide for LSL after ten years continuous service. The majority of the states and territories also provide for a subsequent qualifying period of five years (with most of these states and territories having provided for the initial entitlement after ten years).

Options

4.1.1 Access after fifteen years service: subsequent entitlements after ten years service

Under this option, employees would access LSL after fifteen years service, with subsequent entitlements available after ten years. This is the lowest common denominator applying across Australia and is the standard applying in WA and Tasmania.

This option:
- would have no cost implications for employers;
- is a lower standard than that which prevails in most states and territories and therefore arguably is not a reasonable or equitable standard;
- arguably does little to address challenges presented by growing work intensification, in particular, the challenges to better assist employees renew their energies or to assist employees balance work and family commitments. [As discussed in section 3, work intensification has grown in Australia. In this context, providing employees with an opportunity to renew their energies takes on greater importance, even more so given that most employees are unable to take their full annual leave entitlements. Similarly, there is increased pressure on employers to help their employees better balance their work/family commitments and LSL could be better used to facilitate this]; and
- would require no change amongst the states and territories.

4.1.2 Access after ten years service: subsequent entitlements after five years

Under this option, employees would access LSL after ten years continuous service, with a subsequent entitlement available after five years. This is the standard that applies in New South Wales (NSW), the Australian Capital Territory (ACT), Queensland, the Northern Territory (NT) and South Australia (SA).

Victoria, NSW, the ACT and Queensland provide for subsequent leave entitlements at 5 years. SA provides additional entitlements for every subsequent year of service. Of these jurisdictions, only Victoria does not provide the initial entitlement after 10 years.
Wales (NSW), the Australian Capital Territory (ACT), Queensland, the Northern Territory (NT) and, in effect, SA.  

This option:
- applies in the majority of the states and territories;
- may have no cost implications for employers given that the cost will depend on the quantum of the entitlement. For example, if the quantum of leave doesn’t change, the employer will not be faced with increased LSL costs, although they would be required to meet their LSL obligations for on-going employees sooner. Furthermore, in this scenario, there may be costs savings for an employer given that the employer will be able to pay the employee for LSL at their rate of pay at 10 years service. If an employer has to pay LSL after 15 years service, it will be paid at a higher rate of pay and potentially a greater quantum of leave.
- is not an additional obligation for employers. In the states which require 15 years service to qualify for LSL, Victoria and WA provide for the paying out of pro rata LSL on termination after 10 years service, whilst in Tasmania, pro rata LSL is paid after 7 years service. In other words, employers must already make provision for this entitlement, whether it is actually paid to the employee or not. That said, not all terminated employees are entitled to pro rata payment;
- would better assist employees renew their energies and prevent burn-out in an era of increasing work intensification, as it would enable employees to take an extended absence sooner;
- would help employees better balance work and family commitments – for example, being able to access LSL sooner may help finance a parental leave absence. There may be some argument that LSL is not the appropriate tool to address this issue but it could be equally argued there is no reason why LSL cannot play some role;
- may better encourage loyalty to an employer and so reduce labour turnover and therefore reduce recruitment and training costs and ensure the maintenance of quality output. As highlighted in section 3, there is considerable concern that Australia will face labour shortages in the near future. Whilst the attraction of staff to a particular employer is something perhaps best addressed by the individual employer, either via formal agreements or company policy, it nonetheless should be noted that improving an existing legislated entitlement, which is based on service, may encourage loyalty and help prevent a loss of staff due to burn-out. In a broad policy sense, this may be an appropriate response from governments; and
- would require legislative change in Victoria, WA and Tasmania.  

33 SA actually provides additional LSL entitlements for every subsequent year of service.
34 Currently, Victoria provides the initial entitlement after 15 years, whilst WA and Tasmania provide the initial entitlement after 15 years, with subsequent entitlements after 10 years.
4.2 Quantum of the Leave Entitlement

The issue of quantum can be looked at in two ways: the total leave entitlement or the rate at which the leave entitlement accrues.

If looked at in terms of the total leave entitlement, five of the eight states and territories provide for 13 weeks leave, with the other three providing two months leave. The total leave entitlement for subsequent periods of service varies due to the varying qualifying periods. It is fair to say, however, that on a pro rata basis each of the states and territories, bar the NT and SA, provide for one months leave for each additional five years service. The NT and SA, in effect, provide for 1.5 months leave for each additional five years service.

In terms of the rate of accrual, six of the states and territories provide for an accrual of 0.86 weeks leave per year of service, with the SA and the NT providing a rate of 1.3 weeks leave per year of service. This rate of accrual applies to both the initial leave entitlement and the subsequent entitlements.

Options

Total leave entitlements cannot be sensibly severed from the qualifying period of service. Addressing the issue of quantum in terms of the rate of accrual then avoids such difficulties. The two options presented here therefore relate to the rate of accrual, rather than the total leave entitlement. The total leave entitlement that an employee would receive under each of the following options will depend on the years service required to qualify for the leave.

4.2.1 Accrual rate of 0.86 weeks leave per year of service

Under this option, initial and subsequent leave entitlements and pro rata payment for leave on termination would accrue at the rate of 0.86 weeks leave per year of service. This is the accrual rate currently applicable in the majority of the states and territories.

Under this option, an employee’s total leave entitlement would be 8.67 weeks (two months) after ten years service and 12.9 weeks (three months) after 15 years service.

This option:
- has no cost implications for employers given that it is the minimum standard currently applying across Australia;
- arguably represents a general community standard in that it applies in most jurisdictions;
- may be seen as not going far enough to address issues of work intensification and balancing work and family commitments; and
- would possibly require no legislative change, although this will depend on the associated qualifying period. For example, if the qualifying period was reduced to 10 years, the legislation in WA, Victoria and Tasmania would require change to reflect an entitlement of two months leave after 10 years service.

4.2.2 Accrual rate of 1.3 weeks leave per year of service

This option would adopt the NT and SA standard which would see both the initial leave entitlement and any subsequent entitlements accrue at the rate of 1.3 weeks per year of service. Consequently, an employee’s total leave entitlement would be 13 weeks after ten years service and 19.5 weeks after 15 years service.

---

35 NSW, ACT and Queensland. It should be noted that these entitlements are linked with qualifying periods of service and therefore need to be considered in that light.
36 In WA and Tasmania, subsequent entitlements are not available until a further 10 years service have been provided.
37 SA actually provides subsequent entitlements after 1 year.
This option:
- is not arguably the current community standard;
- would increase costs for employers in these jurisdictions and, depending upon the associated qualifying periods, could require employers to meet these increased costs sooner;
- may only result in employees accruing even larger amounts of leave which they are unable to take due to work pressures. [As highlighted in section 3, the majority of full time employees find it difficult to take all their annual leave for work related reasons];
- would better assist employees better renew their energies and prevent burn-out in an era of increasing work intensification;
- would help employees better balance work and family commitments – for example, a longer absence could be used as a period of paid parental leave or to meet other family commitments. There may be some argument that LSL is not the appropriate tool to address this issue but it could be equally argued there is no reason why LSL cannot play some role;
- may better encourage loyalty to employers with subsequent flow on benefits such as reduced turnover, recruitment and training costs, and the maintenance of quality outputs; and
- would reflect standards currently available to state public servants; and
- would require legislative change in six of the states and territories.
4.3 Pro Rata Payment on Termination

This refers to the years of service required before an employee can access a pro rata payment for LSL upon termination. Currently, the most common standard currently applying in Australia is access after seven years service.\(^{38}\) Moreover, of the four states and territories which provide currently pro rata LSL after seven years, two (Queensland and the NT) prohibit access if the employee resigned and this was not due to illness, incapacity, or domestic or pressing necessity. It is therefore not universal access after seven years.

Implicit in the concept of payment for pro rata LSL is the idea that employees whose employment ends on certain grounds prior to reaching the qualifying period for taking leave should be able to access some payment for their accrued service.

Conditions placed on access

Each state and territory provides some restriction and/or specifies the circumstances in which an employee may access payment of pro rata LSL on termination. For example, in every jurisdiction other than Queensland, an employee is entitled to pro rata LSL if they are terminated by an employer for any reason other than serious and wilful misconduct.\(^{39}\) (In Queensland an employee is only entitled to pro rata LSL if the employer terminates the employee for a reason other than the employee’s conduct, capacity or performance or unfairly dismisses the employee.) Each jurisdiction also provides that pro rata LSL may be paid to an employee who dies or who resigns due to illness, incapacity or domestic or other pressing necessity.\(^{40}\) Other examples of circumstances in which an employee may access pro rata LSL include where an employee resigns lawfully,\(^{41}\) resigns for any reason\(^{42}\) or retires.\(^{43}\)

Options

There are three options discussed below regarding a minimum standard for the length of service required for an employee to be able to access pro rata payment for LSL on termination. Given that all states and territories effectively prevent an employee who has been dismissed for serious or wilful misconduct from accessing payment for pro rata LSL, this condition is assumed to apply to each of the following options. Similarly, it is also assumed that pro rata LSL will be accessible on an employee’s death and, at a minimum, in cases where the employee resigns due to illness, incapacity or domestic or other pressing necessity. Consideration may need to be given, however, to whether these conditions should form part of a minimum standard.

4.3.1 Access after ten years service

Under this option the standard prevailing in Victoria and WA would be adopted as the national minimum: payment for pro rata LSL on termination after ten years service. This option:

- would have no cost implications for employers;
- is a lower standard than that which prevails in most states and territories and therefore arguably is not a community standard;
• will provide no real benefit to employees if a period of ten years to qualify for the taking of LSL is adopted;
• would, if a period of ten years to qualify for the taking of LSL is adopted, run counter to the idea that payment for some part of LSL should be made available to a terminated employee who has not qualified for the full entitlement (subject to certain conditions regarding termination);
• would require no legislative change amongst the states and territories as this standard is the lowest common denominator.

4.3.2 Access after seven years service

Under this option, employees would access payment for pro rata LSL on termination after completing seven years service, this being the standard that applies in the majority of jurisdictions.

This option:
• arguably could be considered a community standard in that it applies in the majority of the states and territories;
• would require employers to meet their pro rata LSL obligations sooner. There may also be cost implications for some employers in that more employees are likely to be able to access some form of payment than may have previously been the case;
• would, if a period of ten years to qualify for the taking of LSL is adopted, be consistent with the idea that payment for some part of LSL should be made available to a terminated employee who has not qualified for the full entitlement (subject to certain conditions regarding termination); and
• would require legislative change in Victoria and WA.

4.3.3 Access after five years service

Under this option, the NSW and ACT standard would be adopted: access to payment for pro rata LSL on termination after completing five years service.

This option:
• would require most employers to meet their pro rata LSL obligations sooner. There is likely to be cost implications for most employers in that more employees are likely to be able to access some form of payment than may have previously been the case;
• may not be considered to be a community standard, as it only applies in a single state; and
• would require legislative change in six of the states and territories.
4.4 Access by Casuals to Long Service Leave

LSL legislation in all of the states and territories, other than in Victoria, make some form of specific reference to casual employees. These references, however, vary. Other than in NSW and SA, the states and territories place, in effect, restrictions on which casuals can access LSL. This may be a specific restriction – for example, casuals who have had a break of more than three months are excluded. Alternatively, some casuals may be restricted simply by the operation of the continuity of service provisions. This may mean that casuals who do not work for a certain number of consecutive weeks will be excluded, for example, seasonal workers.44

NSW and SA, on the other hand, make specific provision for the nature of casual employment by specifying that continuity of service is not deemed to be broken if the break was caused by the absence of the worker under the terms of the worker’s employment/contract of service.

Whilst the treatment of casuals varies, no state or territory specifically excludes casual employees. The courts have therefore adopted the view that, regardless of specific legislation, if a casual employee works for their employer under an unbroken contract of service, then that employee is entitled to LSL. The case law indicates that it is not necessary for the employee to work the same number of hours each day or to work every day.45 It is therefore possible, and is being increasingly recognised by the courts, that notwithstanding continuity of service requirements regarding breaks between periods of employment, seasonal workers may be considered to have continuous service if there is regularity, predictability or pattern to the work.

Options

4.4.1 Status quo

Under this option, no specific mention of casuals would be required. In Victoria and WA the tests laid down in case law would be continue to be relied upon to determine whether a casual employee is entitled to LSL. The more indirect references to casuals in SA and Tasmania would also remain unchanged.

This option:
• would have no cost implications;
• would do little to improve clarity and certainty of obligations, with a continued reliance on the common law. This would mean employers are still required to obtain legal advice and possibly take legal action in order to clarify their obligations;
• runs counter to the standard applying in the majority of jurisdictions insofar as specific references to casuals are made in other statutes;
• does not reflect the significant growth in the number of casual employees; and
• would not require legislative change in any state or territory.

4.4.2 Specify that casual employees are entitled to long service leave

Under this option, the minimum standard would require the relevant statutes to specifically include casuals. The continuity of service provisions would not, however, make specific allowance for the nature of casual employment and therefore this option would not facilitate access by all casuals including, for example, seasonal workers.

This option:
• would have no cost impact for employers, as this change will only reflect existing provisions and/or the common law reality. Alternatively it may actually reduce costs – for example,
reduction in costs associated with obtaining legal advice and/or taking legal action in order to clarify obligations. This would also assist employers in their planning by better accounting for financial obligations;

- will improve the clarity of obligation and remove the reliance on case law. The common law already recognises a right to LSL for casuals - this option would ensure that the statutes clearly reflect this obligation;
- is arguably a community standard in the sense that the majority of jurisdictions specify access to LSL by casual employees;
- will give statutory recognition to the rights of long-term casual employees. As discussed in section 3, the number of casual employees, including long-term casuals, has increased significantly in Australia and has been accompanied by a growing recognition of the need to protect their rights. This option would provide one vehicle for protecting the rights of casuals and ensure they are able to obtain the same benefits as permanent employees eg. an opportunity to renew their energies and to better balance work and family commitments;
- by failing to amend continuity of service provisions to accommodate breaks in service arising from the nature of casual employment, may unfairly limit access – for example, employees who regularly work for an employer on a seasonal basis may be excluded. Of course, this option would not prevent the adoption of provisions specific to seasonal workers in order to clarify their entitlements; and
- would require legislative change in Victoria and WA.

4.4.3 Specify that all casual employees are entitled to long service leave

Under this option, the approach of NSW and SA would be adopted. That is, all casuals are entitled to LSL and continuity of service is not deemed to be broken if the break was caused by the absence of the worker under the terms of that worker’s employment/contract of service. Alternatively, the Queensland approach could be adopted whereby specific provision is made for seasonal employees.

This option is distinguishable from option 4.4.2 in that, in addition to specifically including casuals, specific allowance for the nature of casual employment and its effect on continuity of service should be made.

This option:

- will increase costs for employers of casuals who are currently excluded by virtue of continuity of service provisions (although, overall this cost would be small given that, as noted in section 3, the proportion of casuals who work for the same employer for 10 or more years is small. This could also be partially offset by a reduction in costs associated with obtaining legal advice and/or taking legal action to clarify their obligations.);
- will improve the clarity of obligation and remove a reliance on case law. The common law already recognises a right to LSL for casuals - this option would ensure that the statutes clearly reflect this obligation;
- will give statutory recognition to the rights of long-term casual employees and ensure they are able to obtain the same benefits as permanent employees eg. an opportunity to renew their energies and to better balance work and family commitments. Amending the continuity of service provisions to accommodate breaks in service arising from the nature of casual employment will improve access to employees engaged on a regular but seasonal basis; and
- would require legislative change in all jurisdictions except NSW, SA and Queensland.
4.5 What Service Counts For Long Service Leave

The majority of states and territories provide that the following counts for service for LSL purposes:

- an absence on annual leave and LSL;
- termination by the employer to avoid leave obligations;
- service with a transmitted business;
- service as an apprentice where the employee commences with the employer within 12 months of completing their apprenticeship with that employer;
- employment with a related company; and
- service in the defence forces.

A key area where the states and territories vary concerns the specific amount of leave due to illness or injury that counts for service. This ranges from:

- any absence on account of illness or injury;\(^{46}\)
- 14 days per annum;\(^{47}\)
- 15 days per annum;\(^{48}\) to
- not more than 48 weeks per annum.\(^{49}\)

Another key area concerns whether a period of paid maternity, paternity or parental leave will be counted for service. Queensland and the NT make provision for any paid leave to count as service: this would therefore include paid maternity, paternity and parental leave. NSW and SA also make provision for any absence under the terms of the worker’s employment/contract of service to count as part of the period of employment: such a provision could then include paid maternity, paternity and parental leave.

In contrast Tasmania, whilst providing that a period of maternity leave does not break continuity of service, does not count such leave as part of the period of employment. Similarly, whilst Victoria makes provision for any leave granted by the employer to count for service, the Act specifically excludes maternity leave.

Options

4.5.1 Any paid leave to count as service

Under this option the standard applicable in Queensland and the NT would be adopted: that is, any paid leave taken by an employee will count as service for LSL purposes. This option would include any paid absence due to illness or injury (ie. no limit on the number of days taken) and paid maternity, paternity and parental leave.

This option:
- will increase costs for some employers who do not currently count all paid leave absences as service for LSL purposes;
- recognises the growing focus on balancing work and family commitments and the growth in paid maternity, paternity and parental leave;
- overcomes discriminatory treatment of employees who are absent on paid leave due to family commitments;

\(^{46}\) Tasmania, NSW, Queensland and NT (as long as the leave is paid) and SA.
\(^{47}\) ACT.
\(^{48}\) WA.
\(^{49}\) Victoria.
Long Service Leave in Australia: Towards a National Minimum Standard

- reverses an illogical situation whereby an employee legitimately absent on paid leave – for example maternity leave, cannot have all such service counted for LSL purposes whilst another employee can – for example, an injured employee; and
- will require varying degrees of legislative change in Victoria, WA, Tasmania and the ACT.

4.5.2 No minimum standard

Under this option, there would be no minimum standard regarding the service that should count for LSL purposes: any changes would therefore be left to the discretion of each government.

This option:
- has no cost implications for employers;
- ignores the growing focus on balancing work and family commitments and the growth in paid maternity, paternity and parental leave;
- does not address the discriminatory treatment of employees who are absent on paid leave due to family commitments;
- retains scope for the states and territories to amend their legislation as seen fit; and
- requires no legislative change.
4.6 **Ordinary Rate of Pay**

This refers to the question of the rate of pay that applies to a period of LSL. Each of the statutes in the states and territories refer to the concept of ordinary pay or remuneration and specify what is and is not included in the definition.

The majority of the states and territories exclude overtime, shift work allowances and penalty rates. The exceptions to this are: Victoria, which makes no reference to these entitlements; Tasmania, which includes shift penalties and certain allowances; and the ACT, which includes certain allowances for skills and qualifications. No state or territory explicitly includes casual loadings in the definition of ordinary pay, although the SA legislation does indirectly include it – the definition of ordinary pay notes that a person who is employed on a casual basis is not to be regarded as being paid a penalty rate. There is also some assumption amongst the other states and territories that the rate is to include casual loadings.50

All the states and territories, except Queensland and the NT, specify that a cash value for board and lodging is to be included in the payment of LSL.

**OPTIONS**

4.6.1 **Rate of pay to include certain penalties and allowances**

Under this option, the Tasmanian model would be adopted whereby an employee is entitled to the remuneration they would have received had they remained at work during that period. The definition of ordinary pay would therefore specifically include, where applicable:

- over-award payments;
- shift work allowances; and
- weekend penalty rates.

This option:
- will substantially increase costs for employers whose employees work shift work and weekends.
  Depending upon the award and the employee, a LSL payment may attract penalties and/or loadings of between 10 and 100%;
- is arguably not a community standard;
- recognises the principle that employees should not be worse off financially when they take a period of leave;
- reflects the approach taken with annual leave where, as a general rule, an employee’s ordinary rate of pay includes over-award payments and shift work premiums including weekend and public holiday shifts,51 and
- would require legislative change in all states and territories other than Tasmania.

4.6.2 **Rate of pay to specifically include casual loadings**

Under this option, the definition of ordinary pay would specifically include casual loadings. This option relates to options 4.4.2 and 4.4.3, which propose the specific inclusion of casuals in the legislation.

This option:
- may increase costs for those employers who do not include casual loadings in ordinary pay;


will improve clarity and certainty of obligations for employers. The common law already
recognises a right to LSL for casuals - this option would ensure that the statutes clearly reflect
the exact nature of this obligation. Whilst there is little case law concerning the payment of
casual loadings for a period of LSL, this option reflects the assumption of a number of states
that ordinary pay includes casual loadings;
recognises the principle that employees should not be worse off financially when they take a
period of leave; and
would require legislative change in all states and territories.

4.6.3 No minimum standard

Under this option, there would be no minimum standard regarding the definition of ordinary pay
and the question of what is or is not included will be left to the discretion of each government. (This
option is proposed within the context that, as discussed, the majority of states and territories provide
for a similar definition of ordinary pay which includes cash value of board and lodging and
excludes overtime, penalty rates and allowances.)

This option:
• has no cost implications for employers;
• would do little to improve clarity and certainty of obligations. This would mean employers are
still required to obtain legal advice and possibly take legal action in order to clarify their
obligations. This has cost implications for employers and provides less certainty for their
forward planning;
• retains scope for the states and territories to amend their legislation as seen fit; and
• requires no legislative change.
4.7 Calculation of Leave Entitlements Where Hours Vary or Employment Status Changes

This issue refers to the method of calculating entitlements for employees whose hours vary or whose employment status changes over the qualifying period of service. This then relates to both employees who change status (e.g. full time to part time) and casual employees who work variable hours.

In half of the jurisdictions,\(^{52}\) where an employee’s hours vary, their hours for LSL purposes are calculated according to the average hours worked per week over the preceding 12-month period. In WA and Queensland, hours are averaged out over the entire period of employment; in SA, where hours vary over the preceding three years, hours are averaged out over that period; and in NSW hours are averaged out over either the preceding 12 months or the preceding five years, whichever is the greater.

Other than Queensland and WA, no jurisdiction makes provision for averaging of hours where a person’s employment status changes during the qualifying period of service. This means, for example, that where an employee works for thirteen years on a full time basis and then part time for two years, the employee will only receive LSL based on their hours at the time of taking the leave – that is, their part time hours.

The keeping of time records is required in order to calculate average hours of work. The requirements for keeping LSL-related records vary between the jurisdictions, with SA, the NT and the ACT being the only jurisdictions which specifically require the keeping of a record of the hours worked by an employee for LSL purposes. Although industrial relations statutes may require the keeping of time records, as a general rule, employers are not required to keep time records beyond a certain age (for example, six years after the record was made), irrespective of whether the employee is still employed.\(^{53}\) In contrast, other than in Queensland, there are no time limits regarding the keeping of LSL related records during a worker’s period of employment.\(^{54}\)

Options

Both of the following options relate to the method of calculating an employee’s hours of work for the purposes of LSL where that employee has worked variable hours over the qualifying period of service and/or has changed their employment status – for example, from full time to part time employment. These methods would be used even where only one change of status has occurred.

4.7.1 Average hours over preceding 12-month period

Under this option, the standard applying in the majority of jurisdictions would be adopted as the minimum. That is, hours are averaged out over the preceding 12-month period.

This option:
- would have no cost impact on employers;
- could be seen as the community standard given it is the most common standard applying in the states and territories;
- would not present any problems concerning the keeping of time records. Although most jurisdictions do not require the keeping of time records for LSL purposes, industrial relations

\(^{52}\) Victoria, Tasmania, ACT and the NT.
\(^{53}\) It should be noted that there are no record keeping requirements under the Workplace Relations Act 1996 for non-federal award or agreement employees in Victoria.
\(^{54}\) As there is no specific LSL Act in Queensland, record keeping requirements are as per employment record keeping requirements in the Industrial Relations Act 1996. These records need only be kept for six years, irrespective of whether an employee is still employed.
legislation does and will therefore assist employers in this regard (other than in Victoria where there are currently no record keeping requirements for non-federal award or agreement employees);

- disadvantages employees who may have worked the majority of the qualifying period on a full time basis or on more substantial hours. It may particularly disadvantage women and more generally workers with family responsibilities who have reduced their hours or changed their employment status to meet their family responsibilities, older workers who have reduced their hours or changed their employment status as part of a phased retirement, or workers who have returned to work on reduced hours following a period of illness or injury. It is therefore arguably discriminatory;

- reflects an assumption that the dominant form of employment in Australia is full time employment. As noted in section 3, full time employment is declining whilst part time and casual employment is on the rise. This option therefore ignores the substantial growth in non-standard employment and the decline in full time employment;

- runs counter to how annual leave is usually calculated whereby hours of annual leave accrued on a full time basis are accumulated with hours accrued on a part time basis;

- appears to be based on an arbitrary period of time; and

- would not require legislative change.

4.7.2 Average hours over entire qualifying period of employment

Under this option, the WA and Queensland standard would be adopted whereby an employee’s hours are averaged out over their entire qualifying period of employment.

This option:

- would, if the average hours resulted in increased hours of work, increase costs for those employers who would have previously provided LSL on the basis of lower average weekly hours;

- may create difficulties for the calculation of average hours if an employer has not kept (and was not required to keep) time records for the entire period of employment (only SA, ACT and the NT specify the keeping of time records for LSL). This option would therefore also require legislative change regarding the keeping of time records for LSL purposes;

- will better reflect the actual service provided by the employee during their period of employment;

- is consistent with how annual leave is calculated;

- will better reflect the growth in non-standard employment and decline in full time employment;

- does not discriminate against workers who have reduced their hours of work or changed their employment status due to family responsibilities, approaching retirement or a period of illness or injury; and

- would require legislative change required in all jurisdictions other than WA and Queensland.
4.8 Cashing Out Long Service Leave Entitlements

The concept of cashing out leave entitlements, whereby payment is provided to an employee in lieu of the employee taking leave, is a relatively recent phenomenon, both in relation to annual leave and LSL. Four of the states and territories explicitly allow for employees to cash out their LSL entitlements. The conditions attached to this vary:

- in WA, only non-award employees are able to cash out all or part of their LSL entitlement. Where LSL is to be cashed out, the employee must receive an adequate benefit in lieu of the entitlement and the agreement must be in writing;
- in Tasmania, the cashing out of LSL must be by mutual agreement between the employer and employee;
- in Queensland, LSL can be cashed out if this is permitted by the employee’s industrial agreement or, in the absence of an industrial agreement, if the Queensland Industrial Relations Commission makes an order on compassionate grounds or on grounds of financial hardship; and
- in SA, the employer and the employee must reach agreement in order to cash out LSL. This agreement must be an individual agreement and not an enterprise agreement.

It should be noted that, more generally, employees and employers can agree to cash out LSL entitlements under state awards and legislation via federal industrial agreements and that there is a growing trend for them to do so.

Options

4.8.1 No cashing out

This option would prevent states and territories from allowing employees to cash out any part of their LSL entitlement. (As noted above, irrespective of such a provision, an employer and employee could enter into a federal agreement which may make provision for the cashing out of LSL. Such an agreement, if it meets the no disadvantage test, will override any state or territory legislative provision to the contrary.)

This option:
- may be opposed by employers and employer associations as being inflexible;
- fails to recognise that cashing out is accepted to varying degrees in half the jurisdictions in Australia;
- will disadvantage those employees who may have pressing financial need and/or little need for an extended absence. This option therefore fails to recognise that some employees want access to payment rather than leave;
- fails to recognise that, as discussed in section 3, a significant number of employees currently face difficulties in taking all their annual leave and may therefore equally face difficulties in taking their LSL. Consequently, the employee may ultimately end up have the leave paid out – but on termination. That said, given that it is the pressures of work which prevent many employees from taking their leave, it is arguable that such structural issues should be addressed directly rather than avoided by allowing leave entitlements to be cashed out;
- supports the principle that LSL provides employees with an extended break from work to renew their energies and therefore ought not be cashed out;
- does not rule out parties agreeing to cashing out arrangements via industrial agreements; and
- would require legislative change in WA, Tasmania, Queensland and SA (being the states that currently allow for cashing out).

4.8.2 Cashing out permissible in certain circumstances

Under this option cashing out of LSL is permissible only if provided for in the employee’s relevant
industrial instrument or in circumstances of pressing financial need (the Queensland model).

This option:
- raises questions about the appropriateness of trading conditions for money;
- will need to specify that, where an employee cashes out LSL via an industrial agreement, they cannot also access an entitlement under legislation;
- may create definitional issues – for example, what would be considered a ‘pressing financial need’ – although reference to existing case law may ameliorate this;
- runs counter to the idea that LSL provides employees with an extended break from work to renew their energies, particularly within the context of increasing work intensification where an extended break may take on increased importance;
- would have no cost implications for employers and may, in fact, save money. For example, an employer would not have to employ a replacement employee and would not lose an employee during a key period. It may also assist an employer with cash flow;
- recognises the reality for some employees that the money is needed more than a break from work and that some employees are already struggling to take their annual leave entitlements;
- recognises the reality that industrial agreements are being struck which allow for the cashing out of leave entitlements;
- will help ensure that employees are not coerced into receiving payment rather than being allowed to take leave in that the circumstances in which cashing out is allowed are prescribed;
- increases flexibilities for employers and employees, albeit limited flexibilities; and
- would require legislative change in all jurisdictions except Queensland.

4.8.3 Cashing out permissible by mutual written agreement between employer and employee

Under this option, the Tasmanian/SA approach would be adopted: employers and employees can, by mutual written agreement, cash out part or all of an employee’s LSL entitlement. There would be no limitations regarding the circumstances in which cashing out can occur.

This option:
- runs counter to the concept of providing long serving employees with a break to renew their energies, particularly within the context of increasing work intensification where an extended break may take on increased importance;
- raises questions about the appropriateness of trading conditions for money;
- may result in some coercion of employees to be paid out leave given that there are no substantive conditions placed on cashing out;
- would have no cost implications for employers and may, in fact, save money. For example, an employer would not have to employ a replacement employee and would not lose an employee during a key period;
- recognises the reality for some employees that the money is needed more than a break from work and that some employees are already struggling to take their annual leave entitlements;
- recognises the reality that industrial agreements are being struck which allow for the cashing out of leave entitlements;
- reflects the fact that cashing out is currently provided for in four of the state jurisdictions;
- increases flexibilities for employers and employees; and
- would require legislative change in all jurisdictions except Tasmania and SA.
4.9 Taking of Leave

This issue refers to the question of flexibilities in the taking of LSL. The states and territories vary in their approach: Queensland, SA and the ACT are the most flexible, requiring only that the leave be taken by agreement between the employer and employee. In contrast, the other jurisdictions limit the number of separate periods of leave that may be agreed to by the parties. These range from periods of two to four separate periods depending on the quantum of leave accrued. The jurisdictions also vary as to whether the parties can agree to leave being granted in advance or postponed.

Options

4.9.1 No restrictions on how long service leave is taken (other than by agreement)

Under this option, the approach of Queensland, SA and the ACT would be adopted - that is, the question of how LSL is to be taken is a matter for agreement between the employer and employee. This would mean that LSL could be taken in any configuration (including leave at half pay) and the parties could agree to both the granting of leave in advance and/or the postponement of leave.

This option:
- would have no negative cost implications for employers and could, in fact, save money. For example, it may obviate the need for the employment of a replacement employee if the employee takes their LSL in shorter periods;
- runs counter to the standard applying in the majority of jurisdictions;
- maximises flexibilities for both employers and employees. Flexibilities include enabling employees balance work/family commitments (for example, enabling the employee to take leave in short periods to coincide with school holidays or to take leave at half pay) and ensuring employees are not absent for extended periods during key times;
- would need to ensure that there are safeguards in place to ensure employees are not coerced into taking leave in a particular way;
- reflects contemporary developments regarding flexibility in leave taking, particularly with regard to balancing work and family commitments;
- would be supported by employer organisations. As noted in section 3, ACCI and AiG have made applications to the AIRC seeking changes to federal award standards to improve the balance between work and family commitments. Amongst other things, they are seeking the introduction of long service leave flexibilities, for example, longer periods of LSL at reduced pay, half leave on double pay and LSL being taken in weekly or daily multiples; and
- would require legislative change in all jurisdictions other than Queensland, SA and the ACT.

4.9.2 No minimum standard

Under this option there would be no minimum standard relating to the taking of leave arrangements. Any limits on the taking of leave would therefore be left to the discretion of the state or territory.

This option:
- could have a cost impact on employers insomuch as it limits flexibilities for taking leave. For example, an employer may have to hire a replacement employee or an employee may commence on an extended period of leave at a key time;
- minimises flexibilities for both employers and employees;
- fails to reflect the contemporary labour market which advocates flexibility in leave taking, subject to agreement between the parties;
- would not exclude the possibility of the parties making an agreement about the taking of leave via an industrial agreement; and
- would require no legislative change.
4.10 Notice Requirements

This issue refers to the notice an employer must provide before s/he can require an employee to commence on a period of LSL. All the states and territories, other than Victoria and Tasmania, place notice requirements on the employer. The notice requirements, where they apply, vary between one, two and three months notice.

4.10.1 Minimum notice of one month

Under this option the approach of NSW and WA would be adopted: at least one months notice is required before an employer can require an employee to commence a period of LSL.

This option:
- would have no cost impact on employers;
- could be considered a community standard in that a period of notice is required in the majority of jurisdictions;
- reflects the approach of the taking of annual leave whereby employers are generally required to provide an employee with notice before they can require the employee to commence on a period of annual leave; and
- would require legislative change in Victoria and Tasmania where notice is not currently provided for.

4.10.2 No minimum standard

Under this option there would be no minimum standard relating to notice by an employer for an employee to take leave. Any notice requirements would therefore be left to the discretion of the state or territory.

This option:
- would have no cost impact on employers;
- runs counter to the standard applying in the majority of jurisdictions in terms of notice being required of an employer;
- ignores the approach of the taking of annual leave whereby employers are generally required to provide an employee with notice before they can require the employee to commence on a period of annual leave; and
- would require no legislative change.

---

55 The Victorian legislation does not specify minimum notice required of an employer but it does make provision for an employee to appeal to the Magistrates Court about being required to commence a period of LSL.
56 NSW and WA.
57 NT, SA and the ACT.
58 Queensland.
4.11 Public Holidays

This issue refers to the effect of a public holiday falling during a period of LSL on the period of leave. Four of the eight states and territories specify that a public holiday falling during a period of LSL does *not* extend the period of leave.\(^59\)

**Options**

4.11.1 *Long service leave is exclusive of public holidays*

Under this option, the approach of NSW, the ACT, Tasmania and Queensland would be adopted: a public holiday falling during a period of LSL extends the period of leave.

This option:
- would increase costs for employers, although this is unlikely to be significant given the number of public holidays and when they fall;
- reflects approach taken with annual leave whereby a period of annual leave is extended by a public holiday;
- recognises that there seems to be little justification for the exclusion of public holidays. There would be even less justification if flexibilities are introduced to enable the taking of leave in shorter periods; and
- would require legislative change in Victoria, WA, SA and the NT.

4.11.2 *Long service leave is inclusive of public holidays*

Under this option, a public holiday falling during a period of LSL would not extend the leave. This is the approach taken in Victoria, WA, the NT and SA.

This option:
- would have no cost impact on employers;
- runs counter to the approach taken with public holidays falling during a period of annual leave;
- penalises employees for no logical reason. There would be even less justification to excluding public holidays if employers and employees are able to agree to the employee taking LSL in shorter periods; and
- would not require legislative change.

---

\(^{59}\) Victoria, WA, NT and SA.
5. QUESTIONS FOR DISCUSSION

As noted in section 1, the purpose of this paper is to facilitate discussion and gather input regarding the establishment of a national minimum LSL standard. The paper has examined several components that make up LSL and presented a range of options in relation to these. Again it should be emphasised that the options are proposed as a minimum standard: the capacity remains therefore for the state and territory governments to legislate above any agreed standard.

A number of questions for discussion are detailed below in order to progress discussion and gather input.

1. Should there be a national minimum standard for LSL? Why/why not?
2. Which of the 11 components discussed in this paper should be included in any minimum standard? Why?
3. Which of the 11 components discussed in this paper should NOT be included in any minimum standard? Why?
4. Which options should form the basis of a national minimum standard?
5. What, if any, additional components and/or options warrant consideration? Why?
6. What comments/queries do you have on the options presented and the issues that need to be considered in relation to these options?
REFERENCES

Australian Bureau of Statistics, *Labour Mobility* (February 2002) Cat. No 6209.0


Commissioner for Public Employment (NT), *Long Service Leave in the Northern Territory*


Department of Consumer and Employment Protection (WA), *Long Service Leave Fact Sheet*, www.docep.wa.gov.au


Department of Justice and Industrial Relations (Tasmania), *A Guide to the Long Service Leave Act 1976* (February 2002)

Department of Productivity and Labour Relations (WA), *Flexibility in Long Service Leave* (May 1999)


## ATTACHMENT 1

### LONG SERVICE LEAVE ENTITLEMENTS IN AUSTRALIA

<table>
<thead>
<tr>
<th>State</th>
<th>Initial Leave Entitlement</th>
<th>Subsequent Leave Entitlement</th>
<th>Pro Rata Payment on Termination</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>15 years, 13 weeks, 0.86</td>
<td>5 years, 4 1/3 weeks, 0.86</td>
<td>15+ 10 -15 Additional 1/60 of the period of employment since last entitlement 1/60 of the period of employment</td>
</tr>
<tr>
<td>WA</td>
<td>15 years, 13 weeks, 0.86</td>
<td>10 years, 8 2/3 weeks, 0.86</td>
<td>15+ 10 -15 13 weeks &amp; pro rata Pro rata on the basis of 14 weeks for 15 years service</td>
</tr>
<tr>
<td>TAS</td>
<td>15 years, 13 weeks, 0.86</td>
<td>10 years, 8 2/3 weeks, 0.86</td>
<td>15+ 7 - 15 13 weeks &amp; pro rata Pro rata</td>
</tr>
<tr>
<td>NSW</td>
<td>10 years, 2 months (8.6667 weeks), 0.86</td>
<td>5 years, 1 month (4.334 weeks), 0.86</td>
<td>10+ 5 – 10 2 months &amp; pro rata (after 15 years, only completed years count) Pro rata</td>
</tr>
<tr>
<td>ACT</td>
<td>10 years, 2 months (8.6667 weeks), 0.86</td>
<td>5 years, 1 month (4.334 weeks), 0.86</td>
<td>10+ 5 – 10 2 months plus 1/5 of a month per completed year Pro rata based on 2 months for 10 years service</td>
</tr>
<tr>
<td>QLD</td>
<td>10 years, 8.6667 weeks, 0.86</td>
<td>5 years, 4.334 weeks, 0.86</td>
<td>7+ Pro rata</td>
</tr>
<tr>
<td>NT</td>
<td>10 years, 13 weeks, 1.3</td>
<td>5 years, 6.5 weeks, 1.3</td>
<td>7+ Pro rata</td>
</tr>
<tr>
<td>SA</td>
<td>10 years, 13 weeks, 1.3</td>
<td>1 year, 1.3 weeks, 1.3</td>
<td>10+ 7 – 10 13 weeks plus pro rata 1.3 weeks for each completed year</td>
</tr>
</tbody>
</table>

1 Access to pro rata entitlements is also subject to the reason for the termination of employment.
<table>
<thead>
<tr>
<th>Legislative coverage</th>
<th>Definition of ordinary pay</th>
<th>What service counts for the accrual of LSL</th>
<th>Entitlement where hours vary</th>
<th>Cashing out of LSL</th>
<th>Notice 1 and taking of LSL</th>
<th>Effect of public holidays</th>
</tr>
</thead>
<tbody>
<tr>
<td>VIC</td>
<td>Includes any person employed to do any work for hire or reward and includes an apprentice or trainee</td>
<td>Includes over-award payments, includes the cash value of board and lodging, where there is no fixed rate of pay – average weekly rate earned in previous 12 months, makes no reference to overtime rates, shift allowances and penalty rates</td>
<td>Annual leave or LSL, the taking of any other leave granted by an employer other than maternity leave, absence of not more than 48 weeks due to illness or injury, termination by the employer in order to avoid leave obligations, service with a transmitted business, service as an apprentice where the employee starts with the employer within 12 months of completing the apprenticeship</td>
<td>Average weekly hours over preceding 12 month period</td>
<td>No provision made for cashing out</td>
<td>No notice specified, by agreement initial leave entitlements may be taken in up to 3 separate periods, by agreement subsequent leave entitlements cannot be taken in more than 2 separate periods, by agreement leave can be both granted in advance and postponed, public holidays occurring during leave do not extend period of leave</td>
</tr>
<tr>
<td>WA</td>
<td>General Order applies to an employee under an award or agreement and the Act applies to non-award employees, the General Order makes a reference to casual employees in the method of calculating pay; the Act does not make any specific reference to casual employees, does not apply to employees covered by</td>
<td>Excludes shift premiums, overtime, penalty rates, commissions, bonuses and allowances, includes the cash value of board and lodging, where there is no fixed rate of pay – average weekly rate earned in previous 3 months</td>
<td>Annual leave, LSL or public holidays, absence of 15 days per year due to sickness or injury, termination by the employer in order to avoid leave obligations, naval, military and airforce service, service with a transmitted business</td>
<td>Average hours worked over the period of employment, this applies both where the ordinary hours vary and where a person’s employment status changed during the qualifying period of employment</td>
<td>A non-award employee may agree (in writing) to “an adequate benefit in lieu”</td>
<td>1 months notice, by agreement initial leave entitlements may be taken in up to 3 separate periods, by agreement subsequent leave entitlements cannot be taken in more than 2 separate periods, by agreement leave can be granted in advance, do not extend the period of leave</td>
</tr>
</tbody>
</table>

1 Period of notice an employer must provide before they can require an employee to commence a period of long service leave.
<table>
<thead>
<tr>
<th>Legislative coverage</th>
<th>Definition of ordinary pay</th>
<th>What service counts for the accrual of LSL</th>
<th>Entitlement where hours vary</th>
<th>Cashing out of LSL</th>
<th>Notice (^1) and taking of LSL</th>
<th>Effect of public holidays</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TAS</strong></td>
<td>Includes any person employed to do any work for hire or reward and includes a trainee or apprentice</td>
<td>Includes shift penalties and allowances</td>
<td>Annual leave or LSL</td>
<td>Average weekly number of hours worked during the previous 12 months</td>
<td>By mutual agreement, an employee may elect to accept payment in lieu of a period of leave</td>
<td>Do extend the period of leave</td>
</tr>
<tr>
<td></td>
<td>An employee regularly employed by an employer for at least 32 hours in each consecutive 4 weeks is deemed to be continuously employed</td>
<td>Excludes overtime, travel allowances and bonuses</td>
<td>Public holidays</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Does not apply to employees covered by the <em>Long Service Leave (Construction Industry) Act 1971</em></td>
<td>Includes the cash value of board and lodging</td>
<td>Any absence due to illness or injury that has been certified as necessary by a medical practitioner (eg sick leave, workers compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where there is no fixed rate of pay – average weekly rate earned in previous 12 months</td>
<td>Termination by the employer in order to avoid leave obligations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – average weekly rate earned in previous 3 months</td>
<td>Absence approved by the employer to attend union related committees/training</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td>Jury service or providing evidence in court</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td>Service with a transmitted business</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Includes full time, part time and casual workers who are employed on salary, wages, piece rates or commission</td>
<td>Excludes shift work allowances, overtime, penalty rates and bonuses</td>
<td>Absence under the terms of the worker’s employment</td>
<td>Average hours worked during the previous 12 months or 5 years, whichever is the greater</td>
<td>No provision made for cashing out</td>
<td>Do extend the period of leave</td>
</tr>
<tr>
<td></td>
<td>Defines employee to include casuals and also specifies that continuity of service is not deemed to be broken if the break</td>
<td>Includes the cash value of board and lodging</td>
<td>Absence due to illness or injury</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td>Employment with a related company</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td>Service with a transmitted business</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td>Service in the defence forces</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td>Service as an apprentice where the employee starts with the employer within 12 months of completing the apprentice period</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes shift work allowances, overtime, penalty rates and bonuses</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the cash value of board and lodging</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where remuneration includes payment by results (eg commission) – averaged over previous 12 months or 5 years</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legislative coverage</td>
<td>Definition of ordinary pay</td>
<td>What service counts for the accrual of LSL</td>
<td>Entitlement where hours vary</td>
<td>Cashing out of LSL</td>
<td>Notice and taking of LSL</td>
<td>Effect of public holidays</td>
</tr>
<tr>
<td>----------------------</td>
<td>---------------------------</td>
<td>------------------------------------------</td>
<td>-----------------------------</td>
<td>-------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
</tr>
</tbody>
</table>
| **ACT**              | - Includes part-time employees and casual employees who have "regular and systematic" employment with the employer  
                        - Includes casuals in the definition of employee but some casuals will be excluded by virtue of the continuity of service provisions  
                        - Does not apply to employees covered by the Long Service Leave (Building and Construction Industry) Act 1981  
                        - Includes casuals in the definition of employee but some casuals will be excluded by virtue of the continuity of service provisions  
                        - Does not apply to employees covered by the Long Service Leave (Building and Construction Industry) Act 1981  
          | - Excludes overtime, penalty rates  
                        - Includes over-award payments  
                        - Includes allowances payable for skills, qualifications and board and lodging  
                        - Where remuneration includes payment by results (eg commission) – averaged over previous 12 months  
                        - Annual leave and LSL  
                        - Leave of not longer than 14 days per year due to illness or injury  
                        - Termination by the employer in order to avoid leave obligations  
                        - Service as an apprentice where the employee starts with the employer within 12 months of completing the apprenticeship  
                        - Any period of temporary employment outside of the ACT  
                        - Service, other than full time, in the defence forces  
                        - Service with a transmitted business  
                        - Employment with a related company  
          | - Excludes overtime, penalty rates  
                        - Includes over-award payments  
                        - Includes allowances payable for skills, qualifications and board and lodging  
                        - Where remuneration includes payment by results (eg commission) – averaged over previous 12 months  
                        - Annual leave and LSL  
                        - Leave of not longer than 14 days per year due to illness or injury  
                        - Termination by the employer in order to avoid leave obligations  
                        - Service as an apprentice where the employee starts with the employer within 12 months of completing the apprenticeship  
                        - Any period of temporary employment outside of the ACT  
                        - Service, other than full time, in the defence forces  
                        - Service with a transmitted business  
                        - Employment with a related company  
          | Average number of weekly hours worked during previous 12 months | No provision made for cashing out | - 60 days notice  
                        - the taking of leave in periods of less than 1 month must be by agreement  
                        - By agreement the taking of leave may be postponed | Do not extend the period of leave |
|                     |                          |                                          |                             |                   |                        |                          |
| **QLD**              | - Includes casual employees who are regularly employed by the same employer  
                        - Includes casual employees who are regularly employed by the same employer  
                        - Includes casual employees who are regularly employed by the same employer  
                        - Includes casual employees who are regularly employed by the same employer  
          | - Excludes overtime and penalty payments  
                        - Includes over-award  
                        - Any paid leave  
                        - Termination by the employer in order to avoid leave obligations  
          | - Excludes overtime, penalty rates  
                        - Includes over-award payments  
                        - Includes allowances payable for skills, qualifications and board and lodging  
                        - Where remuneration includes payment by results (eg commission) – averaged over previous 12 months  
                        - Annual leave and LSL  
                        - Leave of not longer than 14 days per year due to illness or injury  
                        - Termination by the employer in order to avoid leave obligations  
                        - Service as an apprentice where the employee starts with the employer within 12 months of completing the apprenticeship  
                        - Any period of temporary employment outside of the ACT  
                        - Service, other than full time, in the defence forces  
                        - Service with a transmitted business  
                        - Employment with a related company  
<pre><code>      | Average hours worked over the period of employment | LSL can be cashed out if permitted by the | - 3 months notice before an employee can be required to take at least 4 weeks of leave | Do extend the period of leave |
</code></pre>
<p>|                     |                          |                                          |                             |                   |                        |                          |</p>
<table>
<thead>
<tr>
<th>Legislative coverage</th>
<th>Definition of ordinary pay</th>
<th>What service counts for the accrual of LSL</th>
<th>Entitlement where hours vary</th>
<th>Cashing out of LSL</th>
<th>Notice ¹ and taking of LSL</th>
<th>Effect of public holidays</th>
</tr>
</thead>
<tbody>
<tr>
<td>the same employer even under separate contracts of employment. Continuity is not broken by any break in employment less than 3 months • Specific provision is made for seasonal employees in the sugar industry and meat works • Does not apply to an employee covered by the <em>Building &amp; Construction Industry (Portable Long Service Leave) Act 1991</em></td>
<td>payments</td>
<td>• Any period where the employee is hired out to a different employer employment • This applies both where the ordinary hours vary and where a person’s employment status changed during the qualifying period of service</td>
<td>the employee’s industrial agreement or if the Commission makes an order for cashing out LSL on compassionate or grounds of financial hardship</td>
<td>leave • By agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Person who has entered into or works under a contract of service or apprenticeship including part-time and casual employees • Includes casuals in the definition of employee but some casuals will be excluded by virtue of the continuity of service provisions</td>
<td>Excludes overtime, allowances and penalty rates • Where there is no fixed rate of pay – average weekly rate earned in previous 12 months</td>
<td>Leave granted with pay by the employer • Termination by the employer in order to avoid leave obligations • Service as an apprentice where the employee starts with the employer within 12 months of completing the apprenticeship • Service in the defence forces • Employment with a related company • Service with a transmitted business</td>
<td>Average number of hours worked during the previous year</td>
<td>No provision made for cashing out</td>
<td>2 months notice • By agreement leave can be taken in 3 separate periods of not less than 4 weeks each • By agreement the taking of leave may be postponed</td>
<td>Do not extend the period of leave</td>
</tr>
</tbody>
</table>

¹ This applies where an employee is covered by a national collective agreement but the order is made by the Commission.
<table>
<thead>
<tr>
<th>Legislative coverage</th>
<th>Definition of ordinary pay</th>
<th>What service counts for the accrual of LSL</th>
<th>Entitlement where hours vary</th>
<th>Cashing out of LSL</th>
<th>Notice ¹ and taking of LSL</th>
<th>Effect of public holidays</th>
</tr>
</thead>
</table>
| SA                   | • Any person employed under a contract of service.  
  • Makes reference to casual employees in the method of calculating pay  
  • Also states that continuity of service is not affected by an absence in accordance with the contract of service  
  • Does not apply to employees covered by the *Construction Industry Long Service Leave Act 1987* | • Includes over-award payments  
  • Excludes overtime, shift premiums and penalty rates  
  • Includes the cash value of board and lodging  
  • Where remuneration includes payment by results (eg commission) – averaged over previous 12 months | • Absence on annual leave or LSL  
  • Absence on account of illness or injury (eg sick leave, workers compensation)  
  • Absence in accordance with the contract of service  
  • Termination by the employer in order to avoid leave obligations  
  • A break caused by the employer where the worker is re-employed by the order of a Court or the Industrial Commission  
  • Service in the defence forces  
  • Employment with a related company  
  • Service with a transmitted business | If, in the preceding 3 years, the worker was employed on an hourly basis or the worker’s ordinary hours per week were varied, then average of hours worked in that 3 year period | Employee may, by agreement, cash out leave upon entitlement to leave (ie. upon 10 years service) | • 60 days notice (although this may be reduced by agreement)  
  • By agreement  
  • By agreement leave can be granted in advance or postponed | Do not extend the period of leave |