

We've done the analysis so you don't need to

LOGIN

SIGN UP

CONTACT US

[LEGISLATION](#)
[AWARDS](#)
[TERMINATION](#)
[INDUSTRIAL RELATIONS](#)
[PAYROLL](#)
[HR MANAGEMENT](#)
[RECRUITMENT](#)
[OHS](#)
[RESOURCES](#)

SEARCH

Advanced search

Saved searches

[Home](#) > [Payroll](#) > [Leave](#) > Long service leave - all states and territories

## Long service leave - all states and territories

[Overview](#)
[The NES](#)
[National standard — problems](#)
[Table — current State/Territory long service leave provisions](#)

### Overview

Under the NES, the Federal Government wants to develop a uniform national standard for long service leave. Long service leave entitlements are currently contained in State and Territory laws and some pre-reform federal awards and pre-WorkChoices agreements.

Because of the disparate entitlements to long service leave throughout Australia, this situation does create difficulties for businesses operating across the various jurisdictions.

Cross-jurisdiction employers are currently required to maintain different long service leave standards depending upon which State or Territory an employee is employed. For this reason the Government intends to eventually have a standard long service leave entitlement that will apply nationally, although its introduction is viewed as problematic.

### The NES

Until a uniform long service leave NES is developed, long service leave entitlements in pre-modernised awards or State or Territory laws will be preserved to ensure they cannot be bargained away.

An employee currently employed under a workplace agreement will retain the long-service leave entitlement (if any) in that agreement while it remains in operation.

Under the NES, an employee's long service leave entitlement in a pre-modernised award will apply unless:

- a workplace agreement or AWA applies
- another specified instrument (eg pre-reform certified agreement) that deals with the matter of long service leave applies (even if it provides that the employee is not entitled to long service leave).

When an existing workplace agreement, AWA or specified instrument ceases to operate, an employee will be entitled to the long service leave entitlement in a pre-modernised award. If no underlying award applies, the employee will be entitled to long service leave under an applicable State or Territory law.

[Back to top](#)

### National standard — problems

Providing a uniform 'national standard' for long service leave may prove problematic for the Government, as any standardisation may result in an improvement in long service leave conditions for some employees but not for others, depending on the jurisdiction.

If the most beneficial long service leave laws were adopted as the standard, this would mean the relevant laws in South Australia and Northern Territory would prevail, both laws providing three months long service leave after 10 years continuous service.

Applying this across-the-board would mean an increase in the long service leave entitlement for employees in the other jurisdictions, whereas, employees in South Australia and Northern Territory would receive no additional benefit.

Another consequence would be an increase in labour costs for employers in the other jurisdictions. Conversely, adopting the more common provision in the other States and Territory, ie two months after 10 years continuous service (or equivalent), would mean a lowering of long service leave entitlements for private sector employees in South Australia and Northern Territory. In these circumstances, it would seem a difficult task for the Government to ultimately satisfy all jurisdictions on this issue.

Another problem with 'standardising' long service leave is that State and Territory long-service leave laws not only provide an amount of leave but also qualified entitlements relating to termination of employment

SIGN UP FOR A FREE TRIAL

### RECENT ARTICLES

[News](#)
[Cases](#)
[Analysis](#)
[Q&A](#)

**In the news: teamwork, jobs, automation and bargaining** 23/07/2018

**Webinar: five trends HR mustn't ignore** 23/07/2018

**Termination payments: new modern award clause released** 23/07/2018

**Looking for a new job? Now's the time to strike** 19/07/2018

### ASK AN EXPERT

### Employment topics A-Z

Your workplace encyclopedia

Updated continuously by workplace expert **Paul Munro**



and other matters, such as the cashing out of leave.

It is unclear what standard will be adopted in these circumstances as these entitlements differ under the various State and Territory laws. It is presumed that other State and Territory long service leave laws that are industry specific, applicable to the building and construction industry or the contract cleaning industry, will be included in the NES.

[Back to top](#)

### Table — current State/Territory long service leave provisions

The following is a table summarising the long service leave provisions that apply in each of the States and Territories throughout Australia. Generally, long service leave legislation applies to the relevant state/territory award employee or non-award employee. An employee employed under a federal award or certified agreement that provides for long service leave is subject to the provisions of the relevant award/agreement, otherwise such federal award employee is covered by the relevant state/territory legislation.

[NSW](#)  
[Victoria](#)  
[Queensland](#)  
[South Australia](#)  
[Western Australia](#)  
[Tasmania](#)  
[Northern Territory](#)  
[Australian Capital Territory](#)

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
<b>New South Wales</b> <a href="#">Long Service Leave Act 1955</a>	2 months' leave after 10 years continuous service. 1 month's leave for each subsequent 5 years of continuous service.  Public holiday occurring during leave extends the period of leave.	<b>After 10 years service</b> On termination for any reason —2 months plus pro rata. (after 15 years only completed years count).  <b>Between 5 &amp; 10 years service</b> Pro rata leave for termination: (a) by the employee on account of illness or incapacity or domestic or other pressing necessity. (b) by the employer for any reason other than serious & wilful misconduct  <b>Less than 5 years service</b> No entitlement	All employees in NSW, including casuals, except employees covered by a federal award or certified agreement which provides for long service leave.  Does not apply to employees covered by the <a href="#">Building &amp; Construction Industry Long Service Payments Act 1986</a> , or the <a href="#">Long Service Leave (Metalliferous Mining Industry) Act 1963</a>	Average weekly wage earned during previous 12 months or 5 years, whichever is the greater.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
<b>Victoria</b> <a href="#">Long Service Leave Act 1992</a>	From 1 January 2006: Long service leave is available after 10 years service. The actual period of leave entitlement remains proportionately the same — ie eight and two-third weeks' leave after 10 years' service.	From 1 January 2006: pro rata long service leave to be paid out on termination after seven years service; and employees dismissed on the grounds of alleged serious and wilful misconduct do not forfeit their entitlement.	Includes any person employed to do any work for hire or reward and includes an apprentice or trainee.  Does not apply to employees covered by the <a href="#">Construction Industry Long Service Leave Act 1997</a>	From 1 January 2006: an employee's hours be averaged over the previous 12 months, or five years, whichever rate is the greater in a situation where an employee's hours of work vary, or no set hours are established.

Public holiday occurring during leave does extend period of leave

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
Queensland <a href="#">Industrial Relations Act 1999</a>	As from 3 June 2001, 8.6667 weeks on completion of 10 years continuous service.  Further leave after each additional 5 years continuous service.  Public holiday occurring during leave extends the period of leave.  Cashing out leave: allowed after 10 years continuous service subject to a provision in an industrial instrument, or application to Qld IRC	<b>After 10 years service</b> On termination for any cause — 8.6667 weeks plus pro rata leave.  <b>Between 7 &amp; 10 years service</b> Termination by employer for any reason other than by the employer due to employee's conduct, capacity or performance; by the death of the employee; termination by employee due to illness or incapacity or domestic or other pressing necessity — pro rata expressed in years & fraction of a year.  <b>Less than 7 years service</b> No entitlement	Includes casual employees who are regularly employed by the same employer even under separate contracts of employment. Continuity is not broken by any break in employment less than 3 months.  Does not apply to an employee covered by the <a href="#">Building &amp; Construction Industry (Portable Long Service Leave) Act 1991</a>	Average on preceding 12 month period.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
South Australia <a href="#">Long Service Leave Act 1987</a>	13 weeks leave after first 10 years of service and 1.3 weeks leave for each subsequent year.  <b>Cashing out of leave</b> Employee may, by agreement, cash out leave upon entitlement to leave (ie upon 10 years service).  Public holiday occurring during leave does not extend the period of leave.	<b>After 10 years service</b> On termination for any reason — 13 weeks plus pro rata leave.  <b>Between 7 &amp; 10 years service</b> 1.3 weeks leave for each completed year except when service is terminated: (a) on the grounds of serious & wilful misconduct, or (b) unlawfully by the worker.  <b>Less than 7 years service</b> No entitlement	Any person employed under a contract of service.  Does not apply to employees covered by the <a href="#">Construction Industry Long Service Leave Act 1987</a>	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 the ordinary weekly pay for purposes of long service leave calculation will be deemed to be the average of hours worked in that 3 year period multiplied by the current hourly rate.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
Western Australia <a href="#">Long Service Leave Act 1958</a> <a href="#">Construction Industry Portable Paid Long Service Leave Act 1985</a>	8 2/3 weeks leave after 10 years and 4 1/3 weeks entitlement after each subsequent 5 years  Public holiday occurring during leave extends the period of leave (this provision is with effect from 4	<b>After 7 years completed service</b> On termination for any reason other than serious & wilful misconduct — pro rata entitlement.  <b>Cashing-in leave</b> A non-award employees may agree (in writing) to	Includes casual & part-time employees.  Applies to all private sector employees.	For casual & part-time employees, the rate of pay is rate for the number of hours usually worked, up to but not exceeding the prescribed standard.  Full-time, part-time and casual employees may work variable hours and employees may

July 2006; previously the opposite was the case).

Provisions in the Construction Industry legislation are essentially the same as in the Long Service Leave Act, with the difference that 'service' refers to service within the construction industry and not with an employer.

'an adequate benefit in lieu'.

change from one employment type to another over their period of employment.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
<b>Tasmania</b> <a href="#">Long Service Leave Act 1976</a>	Long service leave entitlements are: — 8.66 weeks' long service leave in respect of the first 10 years of continuous employment with the employer; and — 4.33 weeks' long service leave in respect of each additional 5 years of continuous employment.	<b>After 10 years service</b> 8.33 weeks plus pro rata leave on termination for any reason. <b>Between 7 &amp; 10 years service</b> Pro rata leave payable if: (a) employee retires; (b) employee terminates for reasons of illness, incapacity or domestic or other pressing necessity. (c) employer terminates for reasons other than serious & wilful misconduct. <b>Less than 7 years service</b> No entitlement. <b>Cashing-in leave</b> By mutual agreement, an employee may elect to accept payment in lieu of a period of leave.	Includes any person employed to do any work for hire or reward and includes a trainee or apprentice.  An employee regularly employed by an employer for at least 12 hours in each consecutive 4 weeks is deemed to be continuously employed.  Does not apply to employees covered by the Long Service Leave (Construction Industry) Act 1971.	Average weekly number of hours worked in that employment during the previous 12 months.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
<b>Northern Territory</b> <a href="#">Long Service Leave Act 1981</a>	13 weeks after 10 years service. A further 6.5 weeks leave after each additional 5 years service.  Public holiday occurring during leave does not extend the period of leave.	<b>After 10 years service</b> On termination for any reason — payment for all leave credit including pro rata leave.  Except when termination for serious misconduct — payment in respect of each completed 10 years service.  <b>Between 7 &amp; 10 years service</b>	Person who has entered into or works under a contract of service or apprenticeship including part-time & casual employment.	Average number of hours worked during the previous year.

Pro rata leave payable:  
 (a) on employee's retirement.  
 (b) by the employer for reasons other than serious misconduct.  
 (c) by employee on account of illness, incapacity or other pressing necessity.

**Less than 7 years service**  
 No entitlement.

STATE/TERRITORY	ENTITLEMENT TO LEAVE	ENTITLEMENT ON TERMINATION	SCOPE OF LEGISLATION	ORDINARY PAY WHERE NO RATE FIXED
<b>Australian Capital Territory</b>	<p>An employee accrues long service leave at the rate of 1/5th of a month's leave for each year of service (approximately 6.06 weeks leave after 7 years continuous service).</p> <p>The qualifying period for long service leave is seven years continuous service with the employer. An employee is entitled to additional long service leave on a year-to-year basis after the initial seven-year period of continuous service with the employer.</p> <p>A public holiday that falls during a period of long service leave extends the period of leave by one day for each such public holiday.</p>	<p><b>Between 5 &amp; 7 years service</b>                      Pro rata based on 2 months for 10 [1/5 of a month for each year of service] years service is payable:                      (a) on employee's death or retirement.                      (b) by employee due to reasons of illness, incapacity or domestic or other pressing necessity.                      (c) by the employer for reasons other than serious &amp; wilful misconduct.</p> <p><b>Less than 5 years service</b>                      No entitlement.</p>	<p>Includes part-time employees, &amp; casual employees who have 'regular &amp; systematic' employment with the employer.</p> <p>Does not apply to employees covered by the <a href="#">Long Service Leave (Building and Construction Industry) Act 1981</a>. Also does not apply to employees covered by the Long Service Leave (Contract Cleaning Industry) 1999 (ACT) or employees of the Commonwealth Government.</p>	<p>For part-time &amp; casual employees — average number of weekly hours worked during previous 12 months.</p> <p>If, within 2 years of the employee becoming entitled to leave, the employee ceases to be employed full-time and is employed part-time or as a casual employee, the ordinary pay for the leave is calculated by dividing by 5 the total amount of salary or wages paid to the employee in the 5 years preceding the leave.</p> <p>Ordinary remuneration does NOT include payments in respect of overtime, or payments at penalty rates of pay, or allowances which, under an industrial instrument, are not to be taken into account in determining a rate of remuneration in respect of overtime.</p> <p>An employee paid wholly by commission, or partly by wages or salary and partly by commission, is to be paid the total of payments made either by commission, salary or wages, divided by 52.</p>

[Back to top](#)

Copyright © 2018 NSW Business Chamber (ABN 63 000 014 504). All rights reserved. No materials on this site or any part of this site may be reproduced or copied in any form without the prior written permission of the publisher. Please refer to our conditions of use, privacy policy and disclaimer.