Who is covered by the Long Service Leave Act? The Long Service Leave Act ('the Act') applies to an employee employed in the Northern Territory if his/her:

- industrial instrument (i.e. award, enterprise agreement or contract of employment) does not cover the subject of long service leave; or
- industrial instrument makes reference to the application of the Act for long service leave. [section 6 of the Act refers]

The Act does not apply to Northern Territory Public Sector, Australian Government employees, or construction workers who are registered under the NT Build portable long service leave scheme.

How do I know if I am covered by an industrial instrument? You could ask your employer or union or you can contact the Fair Work Ombudsman information line on 131394.

I am a casual employee, do I have an entitlement to long service leave? Yes. Casual employees are entitled to long service leave. [section 7 of the Act refers]

What is the long service leave entitlement? Long service leave matures (i.e. employee entitled to take the leave) when you have completed 10 years continuous service with your employer. Further entitlement to long service leave matures after completing each subsequent 5 years of continuous service with that employer. On maturity of your long service leave you will be entitled to 1.3 weeks long service leave for each completed year of service. [section 8 of the Act refers]

Am I entitled to receive a payment in lieu of long service leave when I resign? If you choose to resign from your job and have completed more than 10 years of continuous service you are entitled to payment in lieu equal to your long service leave credit at the time of your resignation. For example, if you have 13 years continuous service and have accessed your 10 year entitlement, you would be entitled to a payout of 3 years i.e. 3.9 weeks.

If you choose to resign from your job and you have less than 10 years service, you are not entitled to a pro-rata payment for long service leave. However under certain circumstances, you are entitled to receive a payment in lieu for pro-rata long service leave at 1.3 weeks for each completed year of service if you have between 7 and not more than 10 years continuous service and you cease employment because:

- you have reached the age at which you may retire; or
- your employer terminates your employment for a reason other than serious misconduct (e.g. redundancy); or
- you have an illness, incapacity or domestic or other pressing necessity which prevents you from being able to work. [section 10(2) of the Act refers]

What is an illness, incapacity or domestic or other pressing necessity? The Act does not define illness, incapacity or domestic or other pressing necessity. The following criteria have been applied by the courts to determine if a pro-rata entitlement exists:

1. Was the reason claimed by the employee at the time of termination one of illness, incapacity or domestic or other pressing necessity?
2. Was such reason genuinely held by the employee?
3. Was the reason a real or motivating reason?
4. Would a reasonable person, in the circumstances be compelled to terminate their employment?
In order to have a pro-rata entitlement your employer may require you to provide evidence to show that your circumstances meet the above criteria.

**What is the age of retirement?** If your industrial instrument does not provide an age of retirement, then it is generally considered to be the age at which a person can access the aged pension under the Social Security Act.

Under the Social Security Act, until 30 June 2017 both men and women are eligible for the age pension at age 65. From 1 July 2017, the age of retirement will increase from 65 years to 65 and a half years. The qualifying age will then rise by six months every two years, reaching 67 by 1 July 2023. See table below.

<table>
<thead>
<tr>
<th>Date of Birth</th>
<th>Qualification Age</th>
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</thead>
<tbody>
<tr>
<td>1 July 1952 to 31 December 1953</td>
<td>65 years and 6 months</td>
</tr>
<tr>
<td>1 January 1954 to 30 June 1955</td>
<td>66 years</td>
</tr>
<tr>
<td>1 July 1955 to 31 December 1956</td>
<td>66 years and 6 months</td>
</tr>
<tr>
<td>From 1 January 1957</td>
<td>67 years</td>
</tr>
</tbody>
</table>

**Am I entitled to pro-rata LSL if I am sacked for serious misconduct?** If you are sacked for serious misconduct and have less than 10 years continuous service you are not entitled to payment of pro-rata long service leave. [section 10(2) of the Act refers]

If you are sacked for serious misconduct and have completed more than 10 years continuous service but less than 15 years of continuous service you are only entitled to receive payment for 10 years (i.e. 13 weeks) provided you have not already accessed that entitlement. [section 10(1) of the Act refers]

If you are sacked for serious misconduct, have completed more than 15 years continuous service and have already accessed your 10 year entitlement, you are entitled to receive payment for each completed 5 years of service. [section 10(1A) of the Act refers]

**When must I take the long service leave?** Usually the time for taking leave is by mutual agreement between you and your employer, however the employer can require you to take your long service leave entitlement, but they must give you not less than 2 months’ notice. [section 8(6) of the Act refers]

**Do I need to take the leave in one block?** Leave should normally be taken in one continuous period unless agreed by you and your employer, in which case it cannot be taken in more than 3 separate periods of not less than 4 weeks each. [section 8(6)(b) of the Act refers]

**Can I cash in my long service leave entitlement without having to take the leave?** No. [section 10(4) of the Act refers]

**How much do I get paid when I am on long service leave?** Generally payment for long service leave is based on your current rate of pay and the average number of hours per week you have worked. It does not include overtime, penalties, district allowance, site allowance etc. Section 11 of the Act contains detailed information and examples of how to calculate pay for long service leave.

**What happens to my long service leave accrual when the business I work for is bought by someone else and I continue working for the new owner?** Where the business is transferred from one employer to another, the transfer shall be deemed not to have broken the continuity of your employment. Therefore, service with the previous employer will continue to count toward the accrual of your long service leave entitlement with the new employer. [section 12(6) of the Act refers]

**What happens to my long service leave accrual when my employer goes bankrupt or into liquidation?** Employees who are owed a long service leave entitlement after losing their job because their employer went bankrupt or into liquidation may be able to get financial help through the Australian Government Fair Entitlements

Do public holidays and weekends extend the period of my long service leave? No. Public holidays and weekends are deemed to be part of the long service leave. [section 9 of the Act refers]

Do I get payment for part years completed? No. The entitlement is for completed years of service only. [section 8 of the Act refers]

If I have been on workers compensation or leave without pay during my employment will that count towards my period of service for long service leave? Absence on workers compensation and unpaid leave will not break the continuity of your period of employment, but will not count as service towards the accrual of your long service leave.

If I believe I am entitled to long service leave and/or a pro-rata payment but my employer disagrees, what do I do?

Step 1
You should discuss the issue with your employer in the first instance. If your employer disputes payment or refuses to make payment you should recommend that parties seek advice regarding merits of case.

Either party can contact the Office of the Commissioner for Public Employment (OCPE) on 08 89994282 to speak with a Consultant regarding the process to resolve the situation. If you consent the Consultant may contact your employer to assist in resolving the matter without proceeding to the formal complaint process.

Step 2
If you believe you have a legitimate unresolved complaint, then you should visit http://www.ocpe.nt.gov.au/about_us/public_holidays_and_long_service_leave and download a complaint form.

Step 3
The complaint form with any evidence supporting your complaint, can be emailed to Enquiries.Ocpe@nt.gov.au or posted to GPO Box 4371, DARWIN, NT 0801 or alternatively an appointment can be made to speak with a consultant by calling 08 89994282.

Step 4
The OCPE may request the employee’s records from the employer to assist the parties to resolve the issue and if necessary conduct an investigation and make a determination as to whether an entitlement exists on the evidence provided by the employer and the employee.

Step 5
Depending on the outcome of the investigation the OCPE may:

1. refer the matter to the Solicitor for the Northern Territory, or
2. recommend that the employee take their own legal action.