LONG SERVICE LEAVE ACT 1955

SUMMARY
ELIGIBILITY FOR LEAVE
Employees are eligible to take long service leave after 10 years service and thereafter after each 5 year's service. This may be 7 years for teachers (check your agreement). NOTE: Leave without pay does not count as service.

The Act says that "the employer shall give to the worker and the worker shall take the leave as soon as practicable having regard to the needs of the employer's establishment". It also states that "The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken". The Act does not require the employee to give any specified period of notice as to when the employee elects to take leave apart from it being "as soon as practicable having regard to the needs of the employer's establishment". In some agreements the notice required is two items (check your agreement).

PRO-RATA PAYMENT ON CESSATION

The Act states that where an employee is terminated by the employer for other than serious and wilful misconduct and has completed 5 years' adult service but less than 10 years' service or ceases employment because of death, illness, incapacity or domestic, or other pressing necessity, the employee shall be paid pro-rata leave on the proportion of 2 months for 10 years' service. If an employee has completed 5 years' adult service under this provision, then service prior to becoming an adult is also counted.

In most awards and agreements in place in the sector the employee has an entitlement to pro-rata long service on termination for any reason including resignation.
PAYMENT FOR LEAVE

Section 4(7) of the Act states:-

"...... where a worker enters upon a period of long service leave, the employer of the worker shall pay to the worker the ordinary pay to be paid to the worker in respect of the period of leave in one of the following ways:-

(a) in full when the worker commences the period of leave; or
(b) at the same time as the worker's ordinary pay would have been paid if the worker had remained on duty, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
(c) in any other way agreed between the employer and the worker, and the ordinary pay shall become due to the worker accordingly."

The choice of methods (a) or (b) rests with the employer but it would be hoped that the employer could meet the needs of the employees.

The ordinary rate of pay is defined as whichever is the greater of either:
(i) the weekly rate of pay at the date of taking leave;

OR

(ii) the weekly rate of pay averaged over the last five years.

Employers should be aware of the effect of this provision which also applies to the awards containing long service leave clauses. If an employee has been part-time (say 2 days per week) for 9 1/2 years and is made full-time (5 days per week), then on completing 10 years service the employee's long service leave entitlement of 2 months under the Act is all payable at the full-time rate.
If, however, the position was reversed with 9 1/2 years full-time service and then part-time for 2 days per week, the long service leave would not be paid at the part-time rate, but at the weekly rate of pay averaged over the last five years.

**PAYMENT IN LIEU OF TAKING LEAVE**

The Act in Section 4 (8) prohibits payment to a worker in lieu of leave or part thereof except on cessation and a penalty can be imposed on both the employer and employee for such a breach of the Act (Section 10 (i)). The usual question of an employee is “Can I be paid for the two months leave for which I am due and continue working?” The answer is “No!”.

Most agreements in place in the sector allow for cashing out of long service leave (check your agreement).

If your agreement contains that provision it overrides the prohibition in the Long Service Leave Act 1955.