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**ELIZABETHAE II REGINAE**

A.D. 1957.

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**No. 47 of 1957.**

An Act to provide for the granting of long service leave to employees and for matters incidental thereto.

[Assented to 14th November, 1957.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short title.

1. This Act may be cited as the "Long Service Leave Act, 1957".

Commence-  
ment.

2. This Act shall commence on a day to be fixed by the Governor by proclamation.

Interpretation.

3. (1) In this Act, unless the context otherwise requires—

"award" includes order and determination :

"employer" means a person employing a worker or workers :

"industrial agreement" means an industrial agreement filed in the office of the Industrial Registrar pursuant to the Industrial Code, 1920-1955, or in the office of the Industrial Registrar pursuant to the Conciliation and Arbitration Act, 1904-1956 of the Commonwealth :

"industrial award" means an award determination order or other adjudication of a court board or tribunal having power to deal with terms and conditions of employment :

“inspector” means a person holding office as Chief Inspector or an inspector under the Industrial Code, 1920-1955 :

“ordinary pay” in relation to a worker means remuneration for that worker’s normal weekly number of hours of work calculated at his ordinary time rate of pay :

“transfer” in relation to a business means a transfer conveyance assignment or other disposition whether by act of parties or operation of law, and the verb “to transfer” and its parts have a corresponding meaning :

“worker” means a person employed under a contract of service.

(2) For the purposes of the definition of “ordinary pay” in subsection (1) of this section—

- (a) where no ordinary time rate of pay is fixed for a worker’s work under the terms of his service, the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period of twelve months immediately before the commencement of the period of leave for which the worker is to be paid ;
- (b) where no normal weekly number of hours is fixed for a worker under the terms of his service, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period referred to in paragraph (a) of this subsection.

4. (1) For the purposes of this Act the continuity of a worker’s service (whether before or after the commencement of this Act) shall not be deemed to have been broken by—

What constitutes continuous service.

- (a) absence of the worker from work for any cause by leave of the employer ;
- (b) absence of the worker from work on account of illness or injury other than injury arising out of and in the course of the worker’s employment ;
- (c) absence of the worker from work on account of injury arising out of and in the course of the worker’s employment ;
- (d) interruption or termination of the worker’s service by the employer with the intention of avoiding obligations in respect of long service leave ;

- (e) interruption of the worker's service arising directly or indirectly from an industrial dispute, but only if the worker returned to work in accordance with the terms of settlement of the dispute ;
- (f) the dismissal of the worker, if he was re-employed by the same employer within three months after the dismissal took effect ;
- (g) the standing down of the worker on account of slackness of trade, but only if the worker returned to work within fourteen days after receiving from the employer an offer of re-employment or notice to resume work.

(2) In calculating the period of continuous service of a worker, the period of the absence of the worker from work while on annual or long service leave, and the period of any such absence as mentioned in paragraph (b) or (c) of sub-section (1) of this section not exceeding fifteen working days in any year of service and the period of any such absence as mentioned in paragraph (d) of sub-section (1) of this section, shall be counted as part of the period of his service ; but the period of any other interruption or absence shall not be counted as part of the period of his service.

(3) Where a business has been, whether before or after the commencement of this Act, transferred from an employer (in this subsection referred to as "the transferor") to another employer (in this subsection referred to as "the transferee") and a person who at the time of the transfer was a worker of the transferor in that business becomes a worker of the transferee in the business—

- (a) the continuity of the service of that worker shall be deemed not to have been broken by reason of the transfer ; and
- (b) the period of the worker's service with the transferor or any previous transferor shall be deemed to be service of the worker with the transferee.

(4) Where a worker apprenticed to an employer has, whether before or after the commencement of this Act, completed his apprenticeship and has either been continued in employment by the employer, or has within three months after such completion been re-engaged in the service of the employer, the period of the apprenticeship shall be counted as part of the period of continuous service of that worker with that employer. Except as provided in this section a period of apprenticeship shall not be counted as service under this Act.

(5) A period of service by a worker as a member of a Naval, Military or Air Force of the Commonwealth (not being service as a member of the Permanent Forces) shall be deemed to be service with the employer by whom the worker was last employed before he commenced to serve as a member of such Force.

For the purposes of this subsection, if a worker before commencing service as a member of a Naval, Military or Air Force had been stood down by his employer and immediately before such commencement was temporarily employed by another employer, the firstmentioned employer shall be deemed to be the employer by whom the worker was last employed before commencing such service.

5. This Act shall not confer a right to long service leave on any worker in the employment of the Crown or of any authority representing the Crown. Crown employees.

6. (1) Subject to this Act, every worker shall be entitled to long service leave on ordinary pay. Right to long service leave.

(2) The amount of long service leave to which a worker is so entitled shall be seven consecutive days in the eighth and in each subsequent year of his continuous service with his employer.

(3) For the purposes of this Act—

(a) if a worker has completed seven years' continuous service with his employer at any time not later than the first day of July, 1957, the period of twelve calendar months commencing on the said first day of July shall be deemed to be his eighth year of service ;

(b) if a worker has completed or completes seven years' continuous service with his employer at any time after the first day of July, 1957, the period of twelve calendar months commencing on the day after such completion shall be deemed to be his eighth year of service.

7. (1) The leave to which a worker is entitled in any year (including any leave postponed to that year) shall, unless it is postponed, be taken— Time for taking leave.

(a) at a time in that year agreed upon between the employer and the worker ; or

(b) at a time in that year fixed by the employer and of which the employer has given at least four weeks notice to the worker.

(2) If at the time when this Act is assented to, or at any time before the first day of July, 1958, negotiations are being conducted with the object of making an industrial award or industrial agreement relating to long service leave for any class or group of workers, any employer employing workers of that class or group may postpone any long service leave which becomes due under this Act to any such worker before the first day of July, 1958. But no such leave shall be postponed to a day later than the thirtieth day of June, 1959, unless the worker consents.

(3) An employer may, from time to time, postpone any long service leave becoming due to a worker if the reasonable needs of the employer's business make such postponement necessary. But no leave shall be postponed under this subsection for more than one year at any one postponement or beyond the end of the fourth year after the year in which it first became due.

(4) By agreement between a worker and his employer the taking of the long service leave due to a worker in any year may be postponed from time to time to a subsequent year and the leave accumulated.

Payment in lieu  
of leave.

8. (1) By agreement with a worker, an employer may pay the worker the amount of pay which would have been payable to the worker in respect of the whole or any part of the leave which he would, in the absence of such payment, be entitled to take under this Act.

(2) Upon such payment the amount of leave to which the worker is entitled under this Act shall be reduced by the period in respect of which such payment is made.

Public and  
trade holidays.

9. Every day (including any Saturday or Sunday but excluding any statutory public holiday) occurring after the commencement of a worker's leave and before the expiration of the number of days for which the leave was granted shall be counted as a day of such leave.

Payment for  
period of leave.

10. The ordinary pay of a worker for the period of long service leave shall be paid to him either—

(a) not later than the day or days when the worker would have been paid if he had been working during the period of his leave ; or

(b) if no such day occurs during the leave, in one sum before the worker commences his leave ; or

(c) at any time agreed upon between the employer and the worker.

11. (1) Where an employer, as part of a worker's ordinary remuneration, provides for the worker or members of his family any benefits being board, sustenance, lodging or the use of land or premises, the employer shall if the worker so requests continue to provide such benefits for the worker or such members during any period while the worker is on leave under this Act.

Continuance of benefits during leave.

(2) An employer who fails to comply with this section shall be guilty of an offence.

12. (1) Where the service of a worker who has not taken all the leave due to him under this Act is terminated, his employer shall pay to him the amount of his ordinary pay for the period of leave not taken less any amount previously paid to him in respect of that period: Provided that a worker shall not be entitled to any such payment if his dismissal was due to dishonesty, misconduct or neglect of duty.

Dismissal or death of worker to whom leave due.

(2) If a worker dies without having taken all the leave due to him in accordance with this Act his employer shall pay to the personal representatives of the worker or to any person entitled to take out probate of the will or letters of administration of the estate of the worker, the amount of the worker's ordinary pay for the period of leave not taken, less any amount previously paid to the worker in respect of that period.

13. (1) An employer who is bound by an industrial award or industrial agreement which provides for long service leave for any workers employed by him shall be exempt from this Act in relation to every worker to whom the award or agreement applies.

Exemptions.

(2) Where an industrial award, industrial agreement, or any number or combination of such awards or agreements provide for long service leave for the majority of the workers employed by an employer, that employer (in addition to being exempt from this Act as provided in subsection (1) of this section) shall be exempt from this Act in relation to all the other workers employed by him, provided that he grants to each such other worker long service leave in accordance with such award or agreement, or if there are two or more of such awards or agreements, in accordance with the award or agreement the provisions of which as to long service leave are the most beneficial to such worker.

(3) If any workers are entitled to long service leave, superannuation benefits or any other similar benefits, or a combination of any such benefits under a scheme paid for wholly or partly by the employer, and such scheme is not less favourable to those workers as a whole than the scheme of long service leave prescribed by this Act, the employer shall be exempt from this Act in relation to every worker to whom the scheme applies.

Effect of industrial award or agreement in certain cases.

14. Where a worker has become entitled to long service leave under this Act and before he takes such leave or receives payment in lieu thereof, he becomes subject to an industrial award or industrial agreement providing for long service leave, the employer shall not be required to grant him such leave or payment under this Act unless it was earned by a period of service not taken into account for the purpose of determining the worker's right to leave under the said award or agreement.

Application of money paid into funds of employers.

15. Where an employer—

(a) has contributed money to a fund for the purpose of providing retiring allowances, superannuation benefits or other similar benefits for any of his workers ; and

(b) becomes bound by this Act or by an industrial award or industrial agreement prescribing long service leave for such workers,

he shall, notwithstanding the provisions of any instrument, be entitled to use any of the money contributed by him into such fund, for the purpose of paying or reimbursing himself for the cost of complying with the obligations imposed by this Act or such awards or agreements.

Prevention of double benefits.

16. (1) In this section the expression "employer's scheme" means a scheme which at the expense of an employer provides long service leave for workers of the employer but is not such as to render the employer exempt from the provisions of this Act.

(2) If before the commencement of this Act a worker has taken long service leave under an employer's scheme or has received a payment in lieu of such leave or at the time of the commencement of this Act is on long service leave under an employer's scheme or has a present vested right to such leave, and the period of service by which such leave or payment or right was earned is more than seven years, then no service before the first day of July, nineteen hundred and fifty-seven, shall be taken into account in determining the rights of the worker under this Act.

(3) Where an employer who has established an employer's scheme grants long service leave to a worker under this Act, the employer may make such adjustments of the rights of the worker under the scheme as are reasonably required for the purpose of setting off the leave so granted under this Act against leave due or becoming due to the worker under the scheme.

17. (1) An employer who except pursuant to an agreement made with the worker fails in any year to grant to a worker the leave (including any postponed leave) which the worker is under this Act entitled to take in that year shall be guilty of an offence and liable to a fine of not more than one hundred pounds.

Failure to grant leave.

(2) The court before which an employer is charged with an offence against this section may, if it finds the defendant guilty, order him to pay to the complainant the amount of pay due to the worker for the period of the leave which should have been, but was not, granted.

(3) If a complaint for an offence against this section is laid by a person other than the worker, the complainant shall pay any amount recovered under subsection (2) to the worker.

18. Any sum of money due to any person by virtue of this Act may be recovered by action in a court of competent jurisdiction.

Civil proceedings.

19. Except as otherwise expressly provided in this Act the provisions of this Act shall have effect notwithstanding any contract or arrangement to the contrary, whether entered into or made before or after the commencement of this Act, and no such contract or arrangement shall annul, vary or exclude any of the provisions of this Act.

Contracting out.

20. (1) For the purpose of ascertaining whether this Act has been complied with or for any other purpose relating to the administration or enforcement of this Act an inspector may—

Inspections.

- (a) enter any premises where he has reasonable cause to believe that any worker is employed ;
- (b) inspect any records relating to long service leave kept at such premises ;
- (c) interview any person in such premises.

(2) An employer shall when requested by an inspector, forthwith produce to the inspector any records kept by or on behalf of the employer relating to long service leave.



(3) A person having any such records in his custody or control shall when requested by an inspector forthwith produce them to the inspector.

(4) A person shall not hinder or obstruct an inspector in the exercise of any powers conferred on him by this section.

(5) A person who contravenes or fails to comply with a requirement of subsection (2), (3) or (4) of this section shall be guilty of an offence.

## Proceedings.

**21.** Proceedings for offences against this Act shall be heard and determined summarily.

## Offences and penalties.

**22.** A person who commits an offence against this Act for which no other penalty is prescribed by this Act shall be liable to a fine not exceeding fifty pounds.

## Time for complaints.

**23.** Notwithstanding any other Act, a complaint for an offence against this Act may be laid at any time not later than twelve months after the cause of the complaint arose.

## Consent to prosecution.

**24.** (1) A prosecution for an offence against this Act shall not be instituted without the consent in writing of the Minister.

(2) The consent of the Minister to any such prosecution may be proved by the production of an apparently genuine document purporting to be signed by the Minister and purporting to give his consent to that prosecution.

## Regulations.

**25.** The Governor may make regulations—

- (a) with respect to the keeping of records concerning long service leave by employers ;
- (b) prescribing any other matters necessary or convenient to be prescribed for securing the administration and enforcement of this Act ;
- (c) prescribing penalties recoverable summarily and not exceeding twenty-five pounds for a breach of any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

R. A. GEORGE, Governor.