



ANNO DECIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1967

No. 65 of 1967

An Act to repeal the Long Service Leave Act, 1957, and to make more effective provision for the granting of long service leave to employees and for matters incidental thereto.

[Assented to 16th November, 1967]

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, 1967".
- Repeal.** 2. The Long Service Leave Act, 1957 is hereby repealed.
- Interpretation.** 3. (1) In this Act, unless the context otherwise requires—
- “agreement” means an industrial agreement filed in the office of the Industrial Registrar under the Industrial Code, 1920-1966, or in the office of the Industrial Registrar under the Conciliation and Arbitration Act, 1904-1966 of the Commonwealth :
- “award” includes an award or order of the Industrial Commission of South Australia, an award of a conciliation committee, or an award or order of the Commonwealth Conciliation and Arbitration Commission :
- “employer” means a person employing a worker or workers, but does not include the Crown :
- “inspector” means a person holding office as Chief Inspector or an inspector under the Industrial Code, 1920-1966.

“ordinary pay” in relation to a worker means remuneration for the worker’s normal weekly number of hours of work calculated at his ordinary time rate of pay, and where the worker is provided with free board or lodging by his employer, includes the cash value of that board or lodging as prescribed by the award under which he is paid or, if such value is not prescribed by any award, as provided by the terms of his employment. The term does not include shift premiums, overtime, or other penalty rates :

“the repealed Act” means the Long Service Leave Act, 1957 :

“worker” means a person employed under a contract of service and includes a person so employed who is remunerated wholly or partly by commission.

(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 or in the case of a worker employed on piece or bonus work or any other system of payment by results 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 preceding the date on which he commences his long service leave or the right to payment in lieu thereof accrues either to the worker or his personal representative ;

and

(b) where no normal weekly number of hours of work 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) Subject to this Act, every worker shall be entitled to long service leave or payment in lieu thereof in respect of his service with an employer. Right to long service leave.

(2) For the purposes of this Act, a worker whose service commenced before the commencement of this Act, shall be deemed to have commenced that service on the date—

(a) on which he commenced service that has been continuous or is deemed to have been continuous under this Act ;

or

- (b) from which his service was, immediately prior to the commencement of this Act, calculated for the purposes of the repealed Act or any award, agreement or scheme then in operation that entitled the employer under section 13 of the repealed Act to be exempt from the obligations of that Act in relation to the worker,

whichever is the later.

(3) Subject to subsection (8) of section 5 of this Act, where a worker, after the commencement of this Act, completes a period of not less than fifteen years' service with an employer, he shall be entitled as follows :—

- (a) in respect of fifteen years' service so completed, to thirteen calendar weeks' leave ;

and

- (b) in respect of each ten years' service completed with the employer after such fifteen years' service to eight-and-two-thirds weeks' leave ;

and

- (c) on the termination of the worker's employment or his death, in respect of the number of years service with the employer completed after such fifteen years service, to a payment in lieu of leave on the basis of thirteen weeks for fifteen years service.

(4) Where the service of a worker is terminated and any long service leave to which he was entitled under this Act at the date of such termination has not been taken by him, the worker, or his personal representative, if the worker is deceased, shall be entitled to a payment in lieu of that long service leave.

(5) Subject to subsection (8) of section 5 of this Act, where a worker completes a period of not less than seven years' service of which at least five years have been served as an adult, but less than fifteen years' service with an employer, and his service is terminated after the commencement of this Act—

- (a) by the employer for any cause other than serious and wilful misconduct ;

or

- (b) by the worker if he has lawfully terminated his contract of service ;

or

- (c) by the death of the worker,

the worker, or his personal representative, if the worker is deceased, shall be entitled to a payment in lieu of long service leave calculated on the basis that the worker is entitled to that proportion of thirteen weeks' leave that the number of years' service completed by the worker with the employer bears to fifteen years.

5. (1) For the purposes of this Act, "service" means continuous service under a contract of service but a worker's service (whether before or after the commencement of this Act) shall be deemed to have been continuous notwithstanding—

What constitutes service.

(a) absence of the worker from work in accordance with the contract of service ;

or

(b) absence of the worker from work for any cause by leave of the employer ;

or

(c) absence of the worker from work on account of illness or injury ;

or

(d) interruption or termination of the worker's service by any act or omission of the employer with the intention of avoiding any obligations imposed on him by this Act, the repealed Act, or any long service leave award, agreement or scheme in operation ;

or

(e) interruption or termination of the worker's service arising directly or indirectly from an industrial dispute if the worker returns to the service of the employer in accordance with the terms of settlement of the dispute or was re-employed by the employer upon such settlement ;

or

(f) the standing down of the worker by the employer on account of slackness of trade, if the worker is re-employed by the employer within six months thereof ;

or

(g) interruption or termination of the worker's service by the employer for any reason other than those referred to in paragraphs (d), (e) and (f) of this subsection

if the worker returns to the service of or is re-employed by the employer within two months of the date on which the service was interrupted or terminated,

but the period during which the worker's service has been interrupted or terminated shall not, in the circumstances referred to in paragraphs (b), (e), (f) and (g) of this subsection be taken into account in calculating the period of the worker's service.

(2) Where a worker has entered or enters into a contract of service with an employer within a period of twelve months after the completion of an apprenticeship with the employer the period of apprenticeship shall be taken into account for the purpose of calculating the period of service with that employer under that contract of service.

(3) 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.

(4) Where a business is, whether before or after the commencement of this Act, transmitted from an employer (in this subsection called "the transmittor") to another employer (in this subsection called "the transmittee") and a worker who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee—

(a) the continuity of the service of the worker shall be deemed not to have been broken by reason of such transmission ;

and

(b) the period of service which the worker has had with the transmittor or any prior transmittor shall be deemed to be service of the worker with the transmittee.

(5) For the purposes of subsection (4) of this section, "business" includes any part of a business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law, and "transmitted" has a corresponding meaning.

(6) Associated companies or companies that are related to each other within the meaning of section 6 of the Companies Act, 1962-1966, shall be deemed to be one employer for the purposes of this Act and where a worker has been employed by two or more of such companies, the company by which he was employed when his right to long service leave or to payment in lieu thereof accrued, shall grant such long service leave or make such payment in lieu thereof in all respects as if the worker had been continuously employed by that company during the period in respect of which the right to such long service leave or payment in lieu thereof accrued.

(7) Companies shall, for the purposes of subsection (6) of this section, be deemed to be associated companies if the directors of each are substantially the same or if they are under substantially the same management.

(8) In the case of a worker who commenced service with an employer before the first day of January, 1966, and, after the commencement of this Act, completes a period of not less than fifteen years' service with the employer or whose service having commenced as aforesaid is terminated after the commencement of this Act and after the worker has completed at least seven years' service with the employer of which at least five years have been served as an adult, in a manner that would entitle the worker to payment in lieu of long service leave under subsection (5) of section 4 of this Act, the long service leave or payment in lieu thereof to which the worker is entitled shall be calculated on the basis—

(a) that the worker is entitled to a period of leave that bears to thirteen weeks the same proportion as the period of service completed by the worker with the employer prior to the first day of January, 1966, calculated to the nearest complete week of service, bears to twenty years ;

and

(b) that the worker is entitled, in addition, to a period of leave that bears to thirteen weeks the same proportion as the period of service completed by the worker with the employer after the first day of January, 1966, calculated to the nearest complete week of service, bears to fifteen years.

(9) An employer shall not be required to grant to a worker leave to which he has become entitled pursuant to this Act until the amount of such leave is thirteen weeks in respect of his

first period of entitlement: Provided that this subsection shall not affect any obligation to make a payment in lieu of leave.

Payment for
period of
leave.

6. (1) An employer shall pay to a worker on long service leave remuneration at the rate of the worker's ordinary pay applicable immediately prior to the commencement of the worker's long service leave but if any variation in the rate of ordinary pay is made during the period of the long service leave, the employer shall adjust the worker's remuneration to give effect to that variation.

(2) Payment shall be made in one of the following ways:—

(a) in advance for the whole period of long service leave;

or

(b) at the same times as payment would have been made 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 him;

or

(c) in any other way agreed between the employer and the worker:

Provided that if during the period of leave any variation in the rate of the ordinary pay of the worker is made, and payment has been made in advance the employer shall, upon the worker's return to duty, make any adjustment necessary to give effect to the variation.

(3) Where a worker or his personal representative is entitled to a payment in lieu of long service leave under this Act such payment shall be calculated at the rate of the ordinary pay of the worker applicable immediately prior to the termination of his service and shall be made either forthwith to the worker or, if the worker is deceased, to the worker's personal representative upon his request therefor.

Time for
taking leave.

7. (1) When a worker becomes entitled pursuant to this Act to long service leave such leave shall be granted by the employer as soon as practicable having regard to the needs of his establishment, or subject to subsection (3) of this section at such time or times as may be agreed between the employer and the worker.

(2) Except where a worker otherwise agrees the employer shall give a worker at least sixty days notice of the date from which his leave is to be taken.

(3) Leave shall be granted and taken in one continuous period or, if the employer and the worker so agree, in not more than three separate periods in respect of the first thirteen weeks

entitlement, and in not more than two separate periods in respect of any subsequent period of entitlement.

(4) Every calendar day occurring after the commencement of a worker's leave and before the expiration of the period for which leave was granted, shall be counted as a day of such leave.

8. (1) An employer may by agreement with a worker allow long service leave to be taken by such worker before the right thereto has accrued, but where leave is so taken the worker shall not become entitled to any further leave under this Act or to payment in lieu thereof for the period in respect of which such leave was taken before it accrued.

Agreement for leave before right accrued due.

(2) Where leave has been granted to and taken by a worker pursuant to subsection (1) of this section before the right thereto has accrued and the service of the worker is subsequently terminated before the expiration of the period in respect of which leave has been taken, the employer may deduct from whatever remuneration is payable upon the termination of the worker's service an amount being the difference between the amount actually paid to the worker in respect of long service leave taken by him and the amount of the payment in lieu of long service leave (if any) to which the worker would have been entitled upon termination of his service if he had not taken the long service leave before the right thereto had accrued.

9. Where prior to the commencement of this Act any long service leave was granted or payment in lieu thereof was made to a worker by his employer, such long service leave or payment in lieu thereof shall be deemed to be long service leave granted under this Act either for the actual period of such long service leave or the period of long service leave that the payment in lieu thereof represented at the time of such payment.

Leave taken before commencement of Act.

10. (1) An employer shall during the service of a worker and for a period of three years thereafter, or in the case of termination of a worker's service by his death, for a period of three years after the worker's death or until settlement with the worker's personal representative, whichever is the later, keep a record from which can be readily ascertained the name of each worker, his occupation, his rate of pay, the date of the commencement of his employment, his entitlement to long service leave, any long service leave which has been granted to him or in respect of which payment has been made, whether under this Act or not, and, on the termination of the service of a worker, the manner of termination.

Employer to keep records.

(2) Such record shall be in the form and contain such particulars as may be prescribed.

(3) Where a business is transmitted from an employer to another employer within the meaning of subsection (5) of section 5 of this Act the transmittor of that business shall transmit to the transmittee all records kept by the transmittor under subsection (1) of this section pertaining to the workers who were employees of the transmittor and became employees of the transmittee at the time of the transmission.

Exemptions.

11. (1) The Industrial Commission of South Australia constituted by the President or a Commissioner or the Industrial Registrar may exempt any employer from the operation of the provisions of this Act, except sections 10, 12, 13 and 14 and the regulations in relation thereto, in respect or his workers or any of them in any case where it is satisfied that the workers are entitled, whether immediately or upon fulfilment of certain conditions, to benefits in the nature of long service leave under any award, agreement or scheme conducted by or on behalf of the employer, the provisions of which are not less favourable to such workers, including those at present in employment and those who might be employed in the future, than the provisions of this Act, or for any other reason which to such Industrial Commission appears just and equitable in the circumstances of the case.

(2) An application for exemption under this section may be made by an employer, a party to any award, agreement or scheme relating to long service leave or a registered association that has a proper interest in the matter and any such application shall be made—

(a) within six months after the commencement of this Act ;

or

(b) within three months after the date on which the employer becomes an employer ;

or

(c) immediately prior to or within three months after the making or proposed making of an award, agreement or scheme relating to long service leave by which the employer is or is to be bound,

but the Commission may, in special circumstances allow an extension of the time within which an application may be made.

(3) Any such application may, at the discretion of the Industrial Commission, be dealt with *ex parte*.

(4) For the purposes of section 12 of this Act, where an employer has been exempted under subsection (1) of this section, any long service leave or payment in lieu thereof to which a

worker is entitled pursuant to any award agreement or scheme, shall be deemed to be long service leave or payment in lieu thereof to which the worker is entitled under this Act.

12. Where a worker, or a registered association (within the meaning of the Industrial Code, 1920-1966) of which the worker is a member, or his personal representative, if the worker is deceased, alleges that such worker has not been granted the long service leave or payment in lieu thereof to which he is or was entitled under this Act, whether partially or in full, the worker, registered association or personal representative may apply to the Industrial Commission of South Australia, constituted by the President or a Commissioner or the Industrial Registrar, for an order directing the employer to pay the amount owing, or to grant the leave due, to the person concerned, and the provisions of section 132c of the Industrial Code, 1920-1966, and the regulations and rules of court in relation thereto, shall apply *mutatis mutandis* in all respects as if such claim were a claim pursuant to an award, except that the limitation prescribed by subsection (1) thereof that the amount must have become payable within twelve months immediately prior to the commencement of proceedings shall not apply but where the service of a worker has been terminated, no such application may be made after the expiration of three years from the date of such termination.

Failure to
grant leave.

13. (1) No worker shall during any period when he is on leave pursuant to this Act engage in any employment for hire or reward either by the employer in whose service the worker's right to long service leave accrued or by any other person.

Employment
during leave.

(2) No employer shall employ a worker for hire or reward during any period when such worker is known by him to be on leave pursuant to this Act.

14. (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—

Powers of
Inspectors.

- (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 ;
- and
- (c) interview any person in such premises with respect to matters under this Act.

(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 or interpreter in the exercise of any powers or functions under this section.

(5) No person shall omit truly to answer or reply to any question which an inspector is authorized to ask under this Act.

(6) An inspector may in the exercise of any of his powers under this Act take with him an interpreter and any question or requisition put or made on behalf of the inspector by the interpreter shall be deemed to have been put or made by the inspector and any answer thereto made to the interpreter shall be deemed to have been made to the inspector.

Offences and proceedings.

15. (1) A person who contravenes any provision of this Act shall (unless he has been exempted from the operation of that provision under section 11 of this Act) be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

(2) The court by which any person who is or has been an employer is convicted under subsection (1) of this section may, in addition to imposing a penalty upon that person order him to grant to any person long service leave or to pay to any person a sum that is shown to the satisfaction of the court to be due to him from the person so convicted.

(3) An order shall not be made under subsection (2) of this section to pay to any person a sum to which he is entitled under this Act if the service in respect of which a right to such payment has accrued was terminated more than three years before the commencement of proceedings in respect of the offence.

(4) Proceedings for offences against this Act shall be heard and determined summarily.

(5) Every special case stated on any question of law arising in summary proceedings under this Act shall be dealt with by the Industrial Court of South Australia, and every appeal in such proceedings shall lie to the Industrial Court.

(6) For the purposes of every such special case or appeal all references in the Justices Act, 1921-1965, to the Supreme Court or the Master thereof shall be read as references to the Industrial Court and to the Industrial Registrar thereof respectively.

(7) Notwithstanding anything contained in this section or in section 12 of this Act, a person may take proceedings in any court of competent jurisdiction for the recovery of any sum or the enforcement of any right to which he is entitled under this Act but such proceedings may not be taken after the expiration of three years from the date on which the service in respect of which the claim is made was terminated.

16. The Governor may make any regulations not inconsistent with this Act which may be necessary or convenient for carrying this Act into effect or for facilitating the operation or administration of this Act and without in any way limiting or restricting the generality of the foregoing may make regulations— Regulations.

(a) with respect to the keeping of records concerning long service leave by employers ;

and

(b) prescribing penalties recoverable summarily and not exceeding one hundred dollars for a breach of any regulation.

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

J. M. NAPIER, Governor's Deputy.