

Approved for Reprint, 11th July, 1974.

WESTERN AUSTRALIA.

LONG SERVICE LEAVE.

7° Elizabeth II., No. XLIV.

No. 44 of 1958.¹

(Affected by Act No. 113 of 1965, s. 8.)

[As amended by Acts:

No. 37 of 1964, assented to 12th November, 1964.

No. 97 of 1973,² assented to 27th December, 1973.

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to provide for the Granting of Long Service Leave to certain Employees whose Employment is not Regulated under the Industrial Arbitration Act, 1912, and for matters incidental thereto.

[Assented to 12th December, 1958.]

BE it enacted—

PART I.—PRELIMINARY PROVISIONS.

1. This Act may be cited as the *Long Service Leave Act, 1958-1973*.

Short title
and citation.
Amended by
No. 97 of
1973, s. 1.

2. This Act shall come into operation on a day to be fixed by proclamation.

Commence-
ment.

¹ Proclaimed to come into operation on 24th December, 1958; see *Gazette* 24/12/58, p. 3371.

² Proclaimed to come into operation on 1st March, 1974; see *Gazette* 1/3/74, p. 648.

Arrangement.

3. This Act is arranged as follows:—

PART I.—PRELIMINARY PROVISIONS.

PART II.—CONSTRUCTION AND APPLICATION OF THIS ACT.

PART III.—ENTITLEMENTS TO LONG SERVICE LEAVE OR TO PAYMENT IN LIEU THEREOF.

PART IV.—BOARD OF REFERENCE.

PART V.—APPEALS FROM DETERMINATIONS MADE BY THE BOARD OF REFERENCE.

PART VI.—PROVISIONS FOR ENFORCEMENT OF THE PROVISIONS OF THIS ACT AND OF DETERMINATIONS MADE THEREUNDER.

PART VII.—MISCELLANEOUS PROVISIONS.

Division 1.—Appeals and other Proceedings under this Act.

Division 2.—Records of Employment.

Division 3.—Prohibition of Employment during Long Service Leave.

Division 4.—Inspectors and Powers of Inspection.

Division 5.—Offences.

Division 6.—Representation of Parties in Proceedings under this Act.

Division 7.—Regulations.

PART II.—CONSTRUCTION AND APPLICATION OF THIS ACT.

4. (1) In this Act unless the context requires otherwise

“award” means an award

(a) in force under the Industrial Arbitration Act, 1912; or

(b) in force under the Commonwealth Conciliation and Arbitration Act, 1904, or any Act enacted by the Parliament of the Commonwealth in amendment of or substitution for that Act;

Interpretations.
Amended by No. 37 of 1964, s. 2 No. 113 of 1965, s. 3, No. 97 of 1973, s. 3.

Cf. No. 30 of 1918, s. 14 as to Acts enacted in amendment of or substitution for State Act.

“Board of Reference” means the Board of Reference constituted under this Act; Cf. s. 13 post.

“business” includes any trade, process, profession, or occupation, and any part thereof;

“Commission” has the same meaning as it has in and for the purposes of the Industrial Arbitration Act, 1912;

“Commission in Court Session” has the same meaning as it has in and for the purposes of the Industrial Arbitration Act, 1912;

“employee”

Cf. Industrial Arbitration Act, 1912, s. 6. Long Service Leave Act, 1956, Tasmania, s. 2 (1).

(a) means a person who is employed or usually employed by an employer to do any skilled or unskilled work for hire or reward; and

(b) includes a person

(i) who is an apprentice; or

(ii) who is employed wholly or mainly in the writing of industrial insurance business, or who is employed wholly and solely in collecting at intervals of less than two months premiums payable in respect of industrial insurance, or who is employed wholly and solely in doing both, or whose services for doing both or either are remunerated wholly or partly by commission or percentage reward, but who is not directly or indirectly engaged on or concerned in the carrying on, or conduct of, any other business or occupation in conjunction with, or in association with, that writing or collecting; or

(iii) who is engaged in domestic service; or

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(iv) whose employment is governed by an award or industrial agreement in force under the Commonwealth Conciliation and Arbitration Act, 1904, or any Act enacted by the Parliament of the Commonwealth in amendment of or substitution for that Act; but

(c) does not include a person—

(i) if and while the person is entitled, or eligible to become entitled, to long service leave rights as a member of

the Public Service of the State;

the Teaching Service of the State;

the Railway Service of the State;

the Police Force of the State;

or

a Fire Brigade which is a "permanent fire brigade" according to the interpretation given to that expression by section four of the Fire Brigades Act, 1942; or

(ii) if and while the person is employed by the Crown in the right of the State or by any agency or instrumentality of the Crown in the right of the State as a wage employee who is entitled, or eligible to become entitled, to long service leave rights; or

- (iii) if and while the person is employed under the terms of an award or industrial agreement in force under the Industrial Arbitration Act, 1912; or
- (iv) if and while the person is the subject of an exemption granted under the provisions of section five of this Act; or
- (v) if and while the person is entitled or eligible to become entitled to long service leave under an award or industrial agreement referred to in subparagraph (iv) of paragraph (b) of this interpretation; or
- (vi) if and while the person is less than the maximum age for compulsory attendance of children at a Government or efficient school as provided by the Education Act, 1928 or any proclamation made thereunder;

“employer” means a person by whom an employee is employed and except where subparagraphs (i) and (ii) of paragraph (c) of the interpretation “employee” apply, includes the Crown in the right of the State, and any agency or instrumentality of the Crown in the right of the State, but does not include any person if and while the person is the subject of an exemption granted under the provisions of section five of this Act;

Cf. Industrial Arbitration Act, 1912, s. 6. Long Service Leave Act, 1956, Tasmania, s. 2 (1).

“industrial agreement” means an industrial agreement

- (a) in force under the Industrial Arbitration Act, 1912; or
- (b) in force under the Commonwealth Conciliation and Arbitration Act, 1904, or any Act enacted by the Parliament of the Commonwealth in amendment of or substitution for that Act;

“Industrial Magistrate” means an Industrial Magistrate referred to in section one hundred and three of the Industrial Arbitration Act, 1912;

Cf. Long Service Leave Act, Tasmania, s. 2 (1).

“ordinary pay” means subject to subsection (2) of this section, remuneration for an employee’s normal weekly number of hours of work calculated on the ordinary time rate of pay applicable to him, as at the time when any period of long service leave granted to him under this Act commences, or is deemed to commence, and where the employee is provided with board and lodging by his employer, includes the cash value of that board and lodging, where such board and lodging is not provided and taken during the period of leave, but does not include shift premiums, overtime, penalty rates, commissions, bonuses, allowances, or the like;

Cf. s. 9 (2) and (3) post as to “deemed to commence”.

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

- (a) where the employee is employed on piece or bonus work or any other system of payment by results, he shall be paid during any period when he is on long service leave at the ordinary rate of pay which would be applicable to him if he was employed in the industry appropriate to his calling on a time basis and not on piece or bonus work or other system of payment by results;
- (b) where no ordinary time rate of pay is fixed under the provisions of paragraph (a) of this subsection the ordinary time rate of pay

Cf. Long Service Leave Act, 1956, Tasmania, s. 2 (2).

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shall be deemed to be the average weekly rate earned by him while in employment during the period of twelve months

- (i) ending on the day immediately preceding that on which he commences long service leave or would but for payment in lieu of long service leave have commenced long service leave, if he is then in employment; or
- (ii) ending on the day immediately preceding that on which he was last in employment, if he is not then in employment; or
- (iii) ending on the day immediately preceding that of his death,

as the case requires; and

- (c) where a normal weekly number of hours is not fixed for an employee under the conditions of his employment, the normal weekly number of hours of work shall, subject to paragraph (a) of this subsection be deemed to be the average weekly number of hours worked by him while in employment during the period referred to in paragraph (b) of this subsection; and
- (d) the cash value of any board and lodging provided for an employee shall be deemed to be its cash value as fixed by or under the conditions of the employee's employment, or, if it is not so fixed, shall be computed at the rate of three dollars a week for board, and one dollar a week for lodging; and
- (e) where by agreement between the employer and the employee the commencement of the leave to which the employee is entitled or any portion thereof is postponed to meet the convenience of the employee, the rate of payment for such leave shall be at the ordinary time rate of pay applicable to him at the date of accrual or, if so agreed, at the ordinary time rate of pay applicable at the date he commences such leave.

Exemptions.
Repealed
and re-en-
acted by
No. 97 of
1973, s. 4.

5. (1) The Board of Reference may exempt an employer from the operation of this Act in respect of his employees if it is satisfied that there is an existing or proposed scheme, conferring benefits in the nature of long service leave which in its opinion are or will be, viewed as a whole, not less favourable to the whole of the employees of that employer than the benefits prescribed by this Act.

(2) In order to ensure that the benefits under a scheme in relation to which an employer is granted an exemption under subsection (1) of this section remain not less favourable to the whole of the employees of that employer than the benefits prescribed by this Act, the Board of Reference may—

- (a) grant the exemption subject to such conditions as it determines are fit to impose; and
- (b) from time to time, add to, vary or revoke any such conditions imposed by it.

(3) An application for an exemption under subsection (1) of this section may be made by an employer.

What con-
stitutes
continuous
employment.
Amended by
No. 97 of
1973, s. 5.
Of Long
Service Leave
Act,
Tasmania,
s. 5.

6. (1) For the purposes of this Act employment of an employee whether before or after the commencement of this Act shall be deemed to include

- (a) any period of absence from duty for—
 - (i) annual leave;
 - (ii) long service leave; or
 - (iii) public holidays or half-holidays, or, where applicable to the employment, bank holidays;
- (b) any period of absence from duty necessitated by sickness of or injury to the employee but only to the extent of fifteen working days in any year of his employment;

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- (c) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations under this Act in respect of long service leave or obligations under any award or industrial agreement in respect of annual leave; and
- (d) any period during which the employment of the employee was or is interrupted by service
 - (i) as a member of the Naval, Military or Air Forces of the Commonwealth of Australia other than as a member of the British Commonwealth Occupation Forces in Japan and other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in subsection (2) of section 31 of the Defence Act, 1903-1956 and except in Korea or Malaya after the twenty-sixth day of June, one thousand nine hundred and fifty;
 - (ii) as a member of the Civil Construction Corps established under the National Security Act, 1939-1946; or
 - (iii) in any of the Armed Forces under the National Service Act, 1951, or any Act passed in substitution for, or amendment of, that Act,

but only if the employee, as soon as reasonably practicable after the completion of any such service, resumed or resumes employment with the employer by whom he was last employed prior to the commencement of such service.

(2) For the purposes of this Act, the employment of an employee whether before or after the commencement of this Act shall be deemed to be continuous notwithstanding—

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- (a) the transmission of a business as referred to in subsection (4) of this section;
- (b) any interruption referred to in subsection (1) of this section irrespective of the duration thereof;
- (c) any absence of the employee from his employment if the absence is authorised by his employer;
- (d) any standing-down of an employee in accordance with the provisions of an award, industrial agreement, order or determination
 - (i) in force under the Industrial Arbitration Act, 1912; or
 - (ii) in force under the Commonwealth Conciliation and Arbitration Act, 1904, or any Act enacted by the Parliament of the Commonwealth in amendment of, or substitution for, that Act;
- (e) any absence from duty arising directly or indirectly from an industrial dispute if the employee returns to work in accordance with the terms of settlement of the dispute;
- (f) any termination of the employment by the employer on any ground other than slackness of trade if the employee is re-employed by the same employer within a period not exceeding two months from the date of such termination;
- (g) any termination of the employment by the employer on the ground of slackness of trade if the employee is re-employed by the same employer within a period not exceeding six months from the date of such termination;
- (h) any reasonable absence of the employee on legitimate union business in respect of which he has requested and been refused leave;

- (i) any absence of the employee from his employment after the coming into operation of this Act by reason of any cause not specified in subsection (1) of this section or in this subsection unless the employer, during the absence or within fourteen days of the termination of the absence, gives written notice to the employee that the continuity of his employment has been broken by that absence, in which case the absence shall be deemed to have broken the continuity of employment.

Cf. No. 30
of 1918, s. 31
as to "gives
written
notice".

(3) Any period of absence from, or interruption of employment referred to in paragraphs (c) to (i) inclusive of subsection (2) of this section shall not be counted as part of the period of an employee's employment.

(4) (i) Where a business has, whether before or after the coming into operation hereof, been transmitted from an employer (herein called "the transmitter") to another employer (herein called "the transferee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transferee—the period of the continuous employment which the employee has had with the transmitter (including any such employment with any prior transmitter) shall be deemed to be employment of the employee with the transferee.

(ii) In this subsection "transmission" includes transfer, conveyance, assignment or succession, whether voluntary or by agreement or by operation of law, and "transmitted" has a corresponding meaning.

7. (1) For the purpose of this Act the employment of an employee by the employer by whom he is employed on the coming into operation of this Act shall, subject to the provisions of this section and to those of section six of this Act, be deemed to have commenced on the day on which the employee was first employed by that employer, but in the

Employment
before com-
mencement
of this Act.
Amended
by No. 37 of
1964, s. 4.
Cf. Long
Service Leave
Act, 1956,
Tasmania,
s. 6.

calculation of the employee's entitlement to long service leave under this Act not more than twenty years' continuous employment before the coming into operation of this Act shall be counted.

(2) Any leave, in the nature of long service leave or, as the case may be, payment in lieu thereof, granted, whether before or after the coming into operation of this Act, under any long service leave scheme and irrespective of this Act to an employee in respect of any period of continuous employment with his employer, shall be taken into account in the calculation of the employee's entitlement to long service leave under this Act as if it were long service leave taken under this Act, or, as the case may be, payment in lieu of long service leave under this Act and to be satisfaction to the extent thereof of any entitlement of the employee under this Act.

(3) The entitlement to leave under this Act shall be in substitution for and satisfaction of any long service leave to which the employee may be entitled in respect of employment of the employee by the employer.

(4) [*Repealed by No. 37 of 1964, s. 4.*]

PART III.—ENTITLEMENTS TO LONG SERVICE LEAVE
OR TO PAYMENT IN LIEU THEREOF.

Long Service
Leave.
Repealed
and
re-enacted
by No. 37 of
1964, s. 5.
Cf. Long
Service
Leave Act,
1956,
Tasmania,
s. 8

8. (1) An employee is entitled in accordance with, and subject to, the provisions of this Act, to long service leave on ordinary pay in respect of continuous employment with one and the same employer, or with a person who, being a transmittee, is deemed pursuant to subsection (4) of section six of this Act to be one and the same employer.

(2) Subject to subsections (4) and (5) of this section, an employee who has completed at least fifteen years of such continuous employment, as is

referred to in subsection (1) of this section, is entitled to an amount of long service leave as follows—

- (a) in respect of fifteen years so completed, thirteen weeks;
- (b) in respect of each ten years' continuous employment so completed after such fifteen years, eight and two-thirds weeks; and
- (c) on the termination of the employee's employment—
 - (i) by his death;
 - (ii) in any circumstances otherwise than by his employer for serious misconduct,

in respect of the number of years of such continuous employment completed since the employee last became entitled under this Act to an amount of long service leave, a proportionate amount on the basis of thirteen weeks for fifteen years of such continuous employment.

(3) Subject to subsection (5) of this section, where an employee has completed at least ten years of such continuous employment since the commencement thereof, but less than fifteen years, and the employment is terminated—

- (a) by his death;
- (b) by the employer for any reason other than serious misconduct; or
- (c) by the employee on account of sickness of, or injury to, the employee or domestic or other pressing necessity, where the sickness injury or necessity is of such a nature as to justify, or in the event of a dispute is, in the opinion of the Board of Reference, of such a nature as to justify the termination of the employment,

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the amount of leave to which the employee is entitled shall be a proportionate amount on the basis of thirteen weeks for fifteen years of such continuous employment.

(4) An employee whose continuous employment with an employer began before the first day of October, nineteen hundred and sixty-four and whose continuous employment would entitle him to long service leave under this section, is entitled to long service leave calculated on the following basis—

- (a) for each year of such continuous employment that began before that date, an amount of long service leave calculated on the basis of thirteen weeks for twenty years' continuous employment; and
- (b) for each year of such continuous employment that began on or after that date, an amount of long service leave calculated on the basis of thirteen weeks' leave for fifteen years' continuous employment,

except that the employee is not entitled to long service leave until his completed years of continuous employment entitle him to the amount of long service leave referred to in paragraph (a) or paragraph (b) of subsection (2) of this section, as the case may be.

(5) An employee to whom paragraph (c) of subsection (2) of this section or subsection (3) of this section applies, whose continuous employment with an employer began before the first day of October, nineteen hundred and sixty-four is entitled to an amount of long service leave calculated on the following basis—

- (a) for each year of such continuous employment that began before that date, an amount of long service leave calculated on the basis of thirteen weeks for twenty years' continuous employment; and

- (b) for each year of such continuous employment that began on or after that date, an amount of long service leave calculated on the basis of thirteen weeks for fifteen years' continuous employment.

(6) This section shall not be construed so as to entitle an employee who—

- (a) has been granted long service leave under this Act prior to the coming into operation of the Long Service Leave Act Amendment Act (No. 2), 1964, to long service leave under this Act, as amended by the Long Service Leave Act Amendment Act (No. 2), 1964; or
- (b) has not been granted long service leave under the Long Service Leave Act, 1958, to long service leave under that Act, as well as long service leave under that Act, as amended by the Long Service Leave Act Amendment Act (No. 2), 1964,

in respect of the same period of continuous employment with an employer.

8A. Notwithstanding any other provision in this Act in the event of an agreement between the Western Australian Employers' Federation (Incorporated) and the Trades and Labor Council of Western Australia or a determination of the Commission in Court Session varying from time to time any of the provisions for qualifications or entitlement to long service leave as contained in volume fifty-two of the *Western Australian Industrial Gazette* at pages sixteen to twenty-one, both inclusive, for the majority of awards which those provisions have been incorporated in and form part of, the qualifications and entitlement of employees to long service leave shall forthwith thereafter be varied accordingly.

Variation of qualifications and entitlement to long service leave Added by No. 97 of 1973, s. 6.

Commence-
ment of
long service
leave.

Amended
by No. 37
1964, s. 6.
Cf. Long
Service Leave
Act, 1956,
Tasmania,
s. 10.

Cf. s. 14 (a)
(viii) post.

9. (1) Where an employee becomes entitled to a period of long service leave under this Act

- (a) the leave shall be granted and taken as soon as reasonably practicable after it becomes due or at such time or times as may be agreed between the employer and the employee or, if they do not agree, at such time or times as the Board of Reference, having regard to the needs of the employer's establishment and the employee's circumstances, determines;
- (b) except where the time for taking leave is agreed to by the employer and the employee or determined by the Board of Reference the employer shall give to the employee at least one month's notice of the day on which his leave is to commence; and
- (c) the leave may be granted and taken in one continuous period or, if the employer and the employee 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.

(2) In a case to which paragraph (c) of subsection (2) of section eight of this Act or subsection (3) of section eight of this Act applies the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination. In such cases and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death pay to the employee and upon termination of employment by death pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled or deemed to have been entitled and which would have been taken but for such termina-

tion. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

(3) Where an employee takes a period of long service leave his employer shall pay to the employee his ordinary pay for the period

- (a) in full when the employee commences the leave; or
- (b) at the times when it would have been paid to the employee had he remained at work in his employment with the employer; or
- (c) in any other way agreed between the employee and employer;

but if payment is made pursuant to paragraph (b) of this subsection, the employer shall if requested in writing by the employee to do so, remit payment by cheques posted to an address specified in the written request.

(4) An employee who is taking long service leave

- (a) is not entitled to any extension of that leave because a public holiday, allowable under the employee's conditions of employment, occurs during the period of the leave; and
- (b) is not entitled to leave in lieu of that day,

but if his annual leave becomes due during the period of long service leave, his right to the annual leave is not affected.

10. (1) Any employer may by agreement with an employee allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such a case the employee shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.

Taking
leave in
advance.
Amended
by No. 37 of
1964, s. 7.

(2) Where leave has been granted to an employee pursuant to subsection (1) of this section before the right thereto has accrued due, and the employment to which the leave relates subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted long service leave to which he was not at the date of termination of the employment or prior thereto entitled.

PART IV.—BOARD OF REFERENCE.

The Board
of Reference.

11. A body constituted in accordance with the provisions of this Part has the functions prescribed by this Act.

Name.

12. The name of the body is Board of Reference.

Constitution
of Board of
Reference.
Amended
by No. 37
of 1964, s. 8.
Power to
appoint
includes
power to
remove, etc.
Cf. No. 30 of
1918, s. 34.

13. (1) Subject to the provisions of this section the Board of Reference shall consist of

- (a) one member who shall be a person appointed by the Western Australian Employers' Federation (Incorporated);
- (b) one member who shall be a person appointed by the Trades and Labor Council of Western Australia; and
- (c) one member who shall be Chairman and who shall be appointed by the Commission.

(1a) The members of the Board of Reference and the Chairman thereof holding office as such immediately prior to the coming into operation of the Long Service Leave Act Amendment Act (No. 2), 1964, shall continue to hold their respective offices as member and member and Chairman and shall be deemed to have been duly appointed thereto under this section as amended by that Act.

(2) A member referred to in paragraph (a) or (b) of subsection (1) of this section shall be deemed not to have been appointed unless the appropriate organisation referred to in those paragraphs notifies the Commission in writing, within such time as the Commission requires, of the appointment.

(3) Where an appointment has not been made in accordance with the provisions of subsection (2) of this section, the Commission may appoint the member.

(4) Where the organizations referred to in paragraphs (a) and (b) of subsection (1) of this section agree that a certain person shall be Chairman and notify the Commission in writing, within such time as the Commission requires, to that effect, the Commission shall appoint that person to be Chairman.

(5) Each of the organisations referred to in paragraphs (a) and (b) of subsection (1) of this section may appoint, in the same manner as members are appointed, deputy members one of whom may deputise for the member for whom he is a deputy at any sitting of the Board.

Provisions for appointment of Deputy Members.

(6) The Board of Reference shall sit at such times as are prescribed by regulations and any member, or deputy member, who, without reasonable cause, fails to attend a sitting of the Board of Reference commits an offence against this Act.

Offence. Failure of member to attend sittings.

14. The functions under this Act of the Board of Reference

- (a) include the determination, in the first instance and subject to appeal under this Act, of all questions and disputes referred by a party thereto from time to time arising for determination concerning, or in relation to, or in connection with, rights and liabilities under this Act, including without derogation from the generality of the foregoing provisions of this paragraph, questions and disputes—

Functions of the Board of Reference. Cf. Long Service Leave Act, 1956, Tasmania, s. 11.

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- (i) as to whether a person is or is not an employee, or an employer, to whom this Act applies;
 - (ii) as to the granting to an employer of exemption from the operation of this Act, the period, and the conditions, of exemption;
 - (iii) whether and when and to what extent an employee is or has become entitled to long service leave, or payment in lieu of long service leave;
 - (iv) whether and when and to what extent a deceased employee's personal representatives are or have become entitled to payment;
 - (v) as to the ordinary rate of pay of an employee;
 - (vi) as to whether the ending of his employment by an employee was or was not justified because of illness or incapacity or necessity of the employee;
 - (vii) as to whether the employment of his employee was or was not ended by an employer in order to avoid or to attempt to avoid liability for long service leave;
 - (viii) as to whether and for how long commencement of the taking of long service leave may be postponed; and
- (b) include the exercise in accordance with the provisions of and for the purposes of this Act of such powers as are conferred on the Board of Reference by this Act; but
 - (c) do not include power, authority, or jurisdiction

- (i) to make an order or give a direction to enforce compliance by an employer with any obligation imposed on him by this Act; or
- (ii) to determine any question or dispute arising in the hearing of a prosecution of an offence against this Act.

Cf. ss. 20 and 23 post.

15. A person who is or has been a member of the Board of Reference, is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any authority, power, or jurisdiction, conferred by this Act.

Exemption from personal liability.

16. (1) The Board of Reference may, for any purpose connected with, or related to, the carrying out of its functions,

Power to hold inquiries.

- (a) hold any inquiry;
- (b) summon witnesses;
- (c) receive evidence on oath or affirmation;
- (d) administer an oath or affirmation; and
- (e) require the production of documents or records.

(2) A person who having been lawfully summoned to appear at an inquiry before the Board of Reference does not appear in obedience to the summons, and a person who appears, whether summoned or not, and who

- (a) refuses to be sworn or affirmed as a witness;
- (b) refuses to answer any question he is lawfully required to answer; or
- (c) refuses to produce any document or record he is lawfully required to produce,

commits an offence against the provisions of this Act.

Certificate of determination of question or dispute.

17. (1) Where the Board of Reference makes a determination of any question or dispute, the Chairman shall, at the request of any party to the question or dispute, issue to the party a certificate in writing signed by him certifying as to the determination.

Cf. s. 20 post as to enforcement.

(2) Subject to the provisions of this Act, a determination by the Board of Reference has effect according to its tenor and may be enforced in accordance with the provisions of this Act.

PART V.—APPEALS FROM DETERMINATIONS MADE BY THE BOARD OF REFERENCE.

Appeal against determination made by Board of Reference. Repealed and re-enacted by No. 97 of 1973, s. 7.

18. Any party to a question or dispute on which the Board of Reference has made a determination under this Act may appeal against the determination to the Commission in Court Session.

How appeals are to be made, heard and determined. Repealed and re-enacted by No. 97 of 1973, s. 8.

19. An appeal under section eighteen of this Act shall be made in the time and manner prescribed, and be heard and determined in the manner prescribed, under the Industrial Arbitration Act, 1912 for appeals referred to in section eighty-nine of that Act, with such modifications as are necessary.

PART VI.—PROVISIONS FOR ENFORCEMENT OF THE PROVISIONS OF THIS ACT AND OF DETERMINATIONS MADE THEREUNDER.

Provisions for enforcement.

Amended by No. 37 of 1964, s. 11.

Cf. Industrial Arbitration Act, 1912, s. 99.

20. (1) For the purposes of enforcing the provisions of this Act and of determinations made under this Act, the provisions of this Part apply.

(2) A person who is or was an employee, or who is a personal representative of a deceased employee, and who alleges a breach by a person who is or was the employer of the employee of any obligation imposed on the employer by this Act or by a determination made under this Act to grant long service leave or to make payment in lieu of long

service leave to the employee or, as the case may be, to the personal representative, may by application made in the appropriate form prescribed by the regulations, apply, but only within twelve months after the breach, to an Industrial Magistrate for enforcement of the obligation.

(3) On the hearing of the application, the Industrial Magistrate may, by order, dismiss the application, or order that the person liable as employer shall pay to any person who is or was his employee, or who is the personal representative of his deceased employee any amount that should have been paid under this Act or under a determination made under this Act or at his discretion suspend such order for such time as he thinks fit, and the amount may be recovered accordingly; and for the purpose of any appeal referred to in section twenty-five of this Act the person found liable as aforesaid shall be deemed to have been convicted of a breach of this Act and any amount for which he is so liable shall be deemed a penalty.

21. Jurisdiction is hereby conferred on an Industrial Magistrate to try and to determine all charges of offences against this Act in the same manner as offences against the Industrial Arbitration Act, 1912, may be tried and determined, and to impose as punishment on any person convicted by him of an offence against this Act the penalty prescribed by this Act.

Jurisdiction to deal with offences.
Amended by No. 37 of 1964, s. 12.
Cf. Industrial Arbitration Act, 1912, s. 101.
Cf. s. 33 post as to penalties.

22. (1) All property belonging to any person bound by any judgment, order, conviction, or direction made under this Act by the Commission in Court Session or an Industrial Magistrate is available in or towards satisfaction of the judgment, order, conviction, or direction but to the same extent only as would be the case if the judgment, order, conviction, or direction, were made by the Western Australian Industrial Appeal Court under the Industrial Arbitration Act, 1912.

Property liable to execution.
Amended by No. 37 of 1964, s. 13.
Cf. Industrial Arbitration Act, 1912, s. 102.

(2) For the purpose of giving effect to subsection (1) of this section, the Commission in Court Session or an Industrial Magistrate may on application being made by any person interested in the enforcement of a judgment, order, conviction, or direction, referred to in that subsection, make such order or give such directions as the Commission in Court Session or the Industrial Magistrate as the case requires, deems necessary.

23. [*Repealed by No. 37 of 1964, s. 14.*]

Functions of Sheriff, Bailiff, and other officers. Amended by No. 37 of 1964, s. 15. Cf. Industrial Arbitration Act, 1912, s. 105.

24. The provisions of section one hundred and five of the Industrial Arbitration Act, 1912, which provisions relate to the duties and functions of the Sheriff and other officers in the carrying out and enforcing any judgment, order, or conviction of the Western Australian Industrial Appeal Court and the Commission, apply as if repeated *mutatis mutandis* in this section to any judgment, order, conviction or decision made under this Part; and to the extent to which the Rules of Court referred to in that section are capable of application for the purposes of this Act, those rules, subject to the provisions of section thirty-nine of this Act, apply for the purposes of this Act.

PART VII.—MISCELLANEOUS PROVISIONS.

Division 1.—Appeals and other Proceedings under this Act.

Exclusive jurisdiction. Amended by No. 37 of 1964, s. 16. Cf. Industrial Arbitration Act, 1912, s. 108.

25. (1) Any person claiming to be entitled to a benefit under this Act or any person against whom such a claim is made may in addition to any other right or remedy he may have, apply to the Commission in Court Session for the determination of his rights and liabilities under this Act and the Commission in Court Session may make such declarations and orders as it thinks fit in respect to those rights and liabilities.

(2) There shall be an appeal from a decision of an Industrial Magistrate to the Western Australian Industrial Appeal Court and the provisions of sec-

tion one hundred and three A of the Industrial Arbitration Act, 1912, apply to the appeal with such modifications as circumstances require.

(3) Proceedings under this Act before the Western Australian Industrial Appeal Court or the Commission in Court Session, shall not be impeached or held bad for want of form, or be removable to any Court by *certiorari* or otherwise, and, except where this Act provides otherwise, the proceedings and any judgment, order, conviction, or direction, given or made on or in respect of the proceedings, shall not be challenged, appealed against, quashed, or called in question, by any Court of judicature on any account whatsoever.

Proceedings not impeachable for want of form.
Cf. Industrial Arbitration Act, 1912, s. 108.
Cf. s. 18 ante, as to appeals.

Division 2.—Records of Employment.

26. (1) Each employer shall during the employment and for a period of twelve months thereafter or, in the case of termination by death of the employee a period of three years thereafter, keep a record from which can be readily ascertained the name of each employee and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made under this Act.

Employers bound to keep records of employees.
Cf. Long Service Leave Act, 1956, Tasmania, s. 16.

(2) The record referred to in subsection (1) of this section shall be open for inspection in the manner and circumstances prescribed by this Act.

Division 3.—Prohibition of Employment during Long Service Leave.

27. (1) An employee shall not, during any period when he is on long service leave, engage in any employment for reward in substitution for the employment from which he is on leave.

Prohibition of employment during long service leave.
Cf. Labour and Industry Act, 1953, Vict., s. 161.

(2) If an employee, during any period when he is on long service leave, engages in any employment for reward in substitution for the employment from which he is on leave the employee shall thereupon

forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.

(3) The provisions of this section shall not apply to an employee who, pursuant to subsection (2) of section nine of this Act, is deemed to commence a period of leave on the day of the termination of his employment.

Division 4.—Inspectors and Powers of Inspection.

Inspectors.
Amended
by No. 37 of
1964, s. 17.

28. Persons appointed to hold and holding the office of inspector under the Factories and Shops Act, 1963, are, by virtue of their offices as such, inspectors under this Act.

Powers of
Inspectors.

29. (1) An inspector may
- (a) enter during usual working hours by day or night any premises or place in which he has reasonable cause to believe that any employee is working at his employment, or may enter during usual working hours any premises or place where he has reason to believe any offence against this Act has been committed;
 - (b) take with him a member of the Police Force of the State to assist him in the execution of his duty;
 - (c) take with him any person whom he thinks qualified to act as an interpreter, and whose assistance he deems necessary for the performance of his duties, and if he does so, any question asked by the interpreter shall be deemed to have been asked by the inspector, and any person who obstructs the interpreter shall be deemed to have obstructed the inspector;

- (d) make examination and inquiry necessary to ascertain whether the requirements of this Act are or are not being complied with; and
- (e) require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act,

but an inspector is not authorised by this Act to enter any part or parts of premises used as a private dwelling, unless it is an establishment where more than six persons are for payment or reward received as boarders or lodgers or both.

(2) An inspector shall, if and when called upon, produce satisfactory evidence of his appointment.

(3) An inspector or interpreter shall not disclose to any person, other than in the course of his duties under this Act, any information which he obtains in the exercise of his duties.

30. The occupier of any building, premises, or place, shall at all reasonable times furnish the means required by an inspector for entry, inspection or examination, or inquiry, in the exercise of his powers under this Act.

Occupiers of buildings must permit inspectors to enter.

31. (1) A person

Obstruction of inspectors.

- (a) shall not obstruct an inspector in the execution of his duties under this Act;
- (b) being lawfully required to do so by an inspector, shall not fail to produce or exhibit any records of employment required by this Act to be kept, or to permit extracts to be taken from them or copies of them or any part of them to be made;
- (c) shall not wilfully mislead an inspector in any particular likely to affect the discharge of his duties; or

- (d) being lawfully required to answer any questions by an inspector pursuant to this Act, shall not fail to answer them truthfully to the best of his knowledge, information, and belief. Provided that no person shall be required to answer any question tending to criminate himself.
- (2) A person shall be deemed to obstruct an inspector in the execution of his duty under this Act,
- (a) if without reasonable cause he delays an inspector in the exercise of any of his powers and duties under this Act;
- (b) if without reasonable cause he fails to comply with the requisition of an inspector made under those powers, or fails to produce any documents which he is required pursuant to this Act to produce; or
- (c) if he prevents, or attempts to prevent, any person from appearing alone before, or from being questioned by, an inspector.

Division 5.—Offences.

Offences generally. "This Act" includes regulations. Cf. No. 30 of 1918, s. 4.

32. A person who by act or omission contravenes any of the provisions of this Act or of any determination, judgment, order, or direction which applies to him, commits an offence against this Act.

Penalties. Amended by No. 113 of 1965, s. 8.

33. (1) A person guilty of an offence against this Act for which a penalty is not specifically provided by this Act, is liable to a penalty of not more than two hundred dollars, and for a second offence to a penalty of not more than four hundred dollars.

(2) If the offence is a continuing offence, the Industrial Magistrate convicting the offender, may impose an additional penalty not exceeding ten dollars for each day on which the offence continues.

34. A complaint of an offence against this Act may be made within, but not after the expiration of, twelve months from the commission of the offence.

Limitation.

35. Proceedings against an employer in respect of an offence against this Act do not prejudice or affect any right or benefit conferred by this Act on an employee in the employment of that employer or the personal representatives of a deceased employee who was in the employment of that employer.

Prosecution not a bar to entitlement.

36. Proceedings in respect of an offence against this Act shall be heard and determined pursuant to Part VI of this Act only by an Industrial Magistrate.

Proceedings to be heard by Industrial Magistrate. Amended by No. 37 of 1964, s. 18. Cf. s. 23 ante.

Division 6.—Representation of Parties in Proceedings under this Act.

37. Any person who is a party to proceedings under this Act, may appear in person or be represented by his solicitor or by his agent duly appointed by him for that purpose, and if represented by an agent is bound by the acts of the agent in his capacity as agent.

Representation of parties in proceedings under this Act. Cf. Industrial Arbitration Act, 1912, s. 67.

Division 7.—Regulations.

38. (1) The Governor may make regulations prescribing such matters as are contemplated, required, or permitted, to be prescribed by this Act, and such matters as appear to him to be necessary, desirable, or convenient, for giving effect to the purposes and objects of this Act.

Regulation making power. Amended by No. 113 of 1965, s. 8.

(2) Without limiting the generality of the power conferred by subsection (1) of this section, the Governor may make regulations prescribing as penalties for breaches of regulations so made penalties not exceeding in amount the sum of fifty dollars.

Application to this Act of certain of the regulations made under the Industrial Arbitration Act, 1912.

39. To the extent to which the provisions of the regulations made under the Industrial Arbitration Act, 1912, are capable of application under this Act, those provisions shall apply accordingly; but to the extent that other regulations in addition to, substitution for, or amendment of, those regulations are deemed necessary or desirable for the purposes of this Act, then to that extent other regulations may be made under this Act or under that Act, and such of the forms prescribed by the regulations made under that Act as are capable of use with adaptations for the purposes of this Act, may with such adaptations as are necessary, be used for the purposes of this Act.