

## LONG SERVICE LEAVE (No. 2).

13° Elizabeth II., No. XXXVII.

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No. 37 of 1964.

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**AN ACT to amend the Long Service Leave Act, 1958.**

[Assented to 12th November, 1964.]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Long Service Leave Act Amendment Act (No. 2), 1964.*

Act No. 44  
of 1958.  
Reprinted  
pursuant to  
Reprinting  
of Acts  
Authorisa-  
tion Act,  
1953. 30th  
January,  
1963.

(2) In this Act the Long Service Leave Act, 1958, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Long Service Leave Act, 1958-1964.

2. Section four of the principal Act is amended— <sup>S. 4</sup> amended.

(a) by adding after the interpretation, “business” the following interpretations—

“Commission” means The Western Australian Industrial Commission established under the Industrial Arbitration Act, 1912;

“Commission in Court Session” means the Commission constituted by not less than three Commissioners sitting or acting together; ;

(b) by repealing the interpretation, “Conciliation Commissioner”;

(c) by repealing the interpretation, “Court”; and

(d) by substituting for the words, “section thirteen of the Education Act”, in lines six and seven of subparagraph (vi) of paragraph (c) of the interpretation, “employee”, the passage, “the Education Act, 1928”.

3. Section five of the principal Act is amended— <sup>S. 5</sup> amended.

(a) by adding after the section number “5.” the subsection designation “(1)”; and

(b) by adding a subsection as follows—

(2) In order to insure that a long service leave scheme in relation to which an employer has been granted an exemption pursuant to subsection (1) of this section, remains more favourable to the whole of the employees of that employer than the benefits prescribed by this Act, in accordance with and as required by that subsection, the Board of Reference may, from time to time, add to, vary or revoke any conditions imposed by it pursuant to that subsection.

S. 7  
amended.

4. Subsection (4) of section seven of the principal Act is repealed.

S. 8  
repealed and  
re-enacted.

5. Section eight of the principal Act is repealed and re-enacted with amendments as follows—

Long Service  
Leave.

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,

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. .

6. Subsection (2) of section nine of the principal Act is amended by substituting for the passage, "paragraph (b) or paragraph (c) of subsection (2) of section eight", in lines one and two, the passage, "paragraph (c) of subsection (2) of section eight of this Act or subsection (3) of section eight of this Act". S. 9 amended.

7. Subsection (2) of section ten of the principal Act is repealed and re-enacted with amendments as follows— S. 10 amended.

(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. .

8. Section thirteen of the principal Act is amended— S. 13 amended.

- (a) by substituting for the words, "West Australian Trade Unions Industrial Council" in lines two and three of paragraph (b) of subsection (1), the words, "Trades and Labor Council of Western Australia";
- (b) by substituting for the word, "Court" in line two of paragraph (c) of subsection (1), the word, "Commission";

- (c) by adding after subsection (1) a subsection as follows—

(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. ;

- (d) by substituting for the word, "Court" wherever appearing in line five of subsection (2), the word, "Commission";
- (e) by substituting for the word, "Court" in line three of subsection (3), the word, "Commission"; and
- (f) by substituting for the word, "Court" in lines four, five and six of subsection (4), the word, "Commission".

S. 18  
amended.

9. Section eighteen of the principal Act is amended by substituting for the word, "Court" being the last word in the section, the words, "Commission in Court Session".

S. 19  
amended.

10. Section nineteen of the principal Act is amended by substituting for the passage, "Court, or by the Conciliation Commissioner if that Court, as it is hereby authorised to do, delegates the hearing and determination of the appeal to the Conciliation Commissioner", in lines five to nine inclusive, the words, "Commission in Court Session".

S. 20  
amended.

11. Section twenty of the principal Act is amended—

- (a) by substituting for the words, "the Court" in the second last line of subsection (2), the words, "an Industrial Magistrate";

- (b) by substituting for the word, "Court" in line one of subsection (3), the words, "Industrial Magistrate";
- (c) by substituting for the word, "its" in line seven of subsection (3), the word, "his"; and
- (d) by substituting for the word, "it" in line eight of subsection (3), the word, "he".

12. Section twenty-one of the principal Act is amended— S. 21  
amended.

- (a) by substituting for the words, "the Court" in line one, the words, "an Industrial Magistrate"; and
- (b) by substituting for the word, "it" in line six, the word, "him".

13. Section twenty-two of the principal Act is amended— S. 22  
amended.

- (a) by substituting for the word, "Court" in line three of subsection (1), the words, "Commission in Court Session or an Industrial Magistrate";
- (b) by substituting for the words, "that Court" in line seven of subsection (1), the words, "the Western Australian Industrial Appeal Court"; and
- (c) by repealing and re-enacting subsection (2) as follows—

(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.



S. 23  
repealed.

14. Section twenty-three of the principal Act is repealed.

S. 24  
amended.

15. Section twenty-four of the principal Act is amended by substituting for the word, "Court" in line six, the words, "Western Australian Industrial Appeal Court and the Commission".

S. 25  
amended.

16. Section twenty-five of the principal Act is amended—

- (a) by substituting for the word, "Court" in lines four and six of subsection (1), the words, "Commission in Court Session";
- (b) by repealing and re-enacting subsection (2) as follows—

(2) There shall be an appeal from a decision of an Industrial Magistrate to the Western Australian Industrial Appeal Court and the provisions of section one hundred and three A of the Industrial Arbitration Act, 1912, apply to the appeal with such modifications as circumstances require. ; and

- (c) by substituting for the passage, "the Court, the President of the Court, or, the Conciliation Commissioner", in lines one, two and three of subsection (3), the words, "the Western Australian Industrial Appeal Court or the Commission in Court Session".

S. 28  
amended.

17. Section twenty-eight of the principal Act is amended by substituting for the figures, "1920", in line three, the figures, "1963".

S. 36  
amended.

18. Section thirty-six of the principal Act is amended by deleting the passage, "the Conciliation Commissioner or the Court of Arbitration" in lines four and five.