

Western Australia

Long Service Leave Act 1958

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Long Service Leave Act 1958

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Western Australia

Long Service Leave Act 1958

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

[Long title amended by No. 79 of 1995 s. 45; No. 36 of 2006 s. 54.]

Part I — Preliminary provisions

1. Short title

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

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

[3. *Repealed by No. 44 of 1991 s. 10.*]

Part II — Construction and application of this Act

4. Interpretations

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

“**apprentice**” means an apprentice under the *Industrial Training Act 1975*;

“**award**” means an award in force under the *Industrial Relations Act 1979*;

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

“**employee**” means, subject to subsection (3) —

- (a) any person employed by an employer to do work for hire or reward including an apprentice or industrial trainee;
- (b) any person whose usual status is that of an employee;
- (c) any person employed as a canvasser whose services are remunerated wholly or partly by commission or percentage reward; or
- (d) any person who is the lessee of any tools or other implements of production or of any vehicle used in the delivery of goods or who is the owner, whether wholly or partly, of any vehicle used in the transport of goods or passengers if the person is in all other respects an employee;

“**employer**” includes —

- (a) persons, firms, companies and corporations; and
- (b) the Crown and any Minister of the Crown, or any public authority,

employing one or more employees;

“**industrial agreement**” means an industrial agreement in force under the *Industrial Relations Act 1979*;

“industrial inspector” means an Industrial Inspector as defined in the *Industrial Relations Act 1979*;

“industrial magistrate’s court” has the meaning given by the *Industrial Relations Act 1979*;

“industrial trainee” means an industrial trainee under the *Industrial Training Act 1975*;

“ordinary pay” means subject to subsection (2), 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, allowances, or the like.

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

[(a) deleted]

(b) where the employee is employed on piece or bonus work or any other system of payment by results, the employee’s rate of pay during any period when the employee is on long service leave is the average weekly rate earned by him while in employment during the period of 12 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 the normal weekly number of hours have varied over the period of employment of a full-time, part-time or casual employee the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by the employee during that period of employment (calculated by reference to such hours as are ascertainable if the hours actually worked over that period are not known); 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 prescribed rate; 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.
- (3) Where a person is, by virtue of —
- (a) an award or industrial agreement;
 - (b) an employer-employee agreement under Part VID of the *Industrial Relations Act 1979* or other agreement between the person and his employer; or
 - (c) an enactment of the State, the Commonwealth or of another State or Territory,
- entitled to, or eligible to become entitled to, long service leave at least equivalent to the entitlement to long service leave under

this Act, that person is not within the definition of “employee” in subsection (1).

[Section 4 amended by No. 37 of 1964 s. 2; No. 113 of 1965 s. 8; No. 97 of 1973 s. 3; No. 44 of 1991 s. 11; No. 79 of 1995 s. 46; No. 20 of 2002 s. 20; No. 36 of 2006 s. 55; amended in Gazette 15 Aug 2003 p. 3687.]

5. Limited contracting-out of long service leave

An employer and an employee may agree that the employee may forgo his entitlement to long service leave under this Act if —

- (a) the employee is given an adequate benefit in lieu of the entitlement; and
- (b) the agreement is in writing.

[Section 5 inserted by No. 79 of 1995 s. 47.]

6. What constitutes continuous employment

- (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 15 working days in any year of his employment;
- (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 section 31(2) of the *Defence Act 1903* and except in Korea or Malaya after 26 June 1950;
 - (ii) as a member of the Civil Construction Corps established under the *National Security Act 1939-1946*²; or
 - (iii) in any of the Armed Forces under the *National Service Act 1951*³, 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 —
- (a) the transmission of a business as referred to in subsection (4);
 - (b) any interruption referred to in subsection (1) 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 Relations Act 1979*; or
 - (ii) in force under the *Commonwealth Conciliation and Arbitration Act 1904*⁴, 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 2 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 6 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) or in this subsection unless the employer, during the absence or within 14 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.

- (3) Any period of absence from, or interruption of employment referred to in paragraphs (c) to (i) inclusive of subsection (2) 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 transmittor**") to another employer (herein called "**the transmittee**") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee — the period of the continuous employment which the employee has had with the transmittor (including any such employment with any prior transmittor) shall be deemed to be employment of the employee with the transmittee.
- (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.

[Section 6 amended by No. 97 of 1973 s. 5; No. 79 of 1995 s. 48.]

7. **Employment before commencement of this Act**

- (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 6, be deemed to have commenced on the day on which the employee was first employed by that employer, but in the calculation of the employee's entitlement to long service leave under this Act not more than 20 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.

[Section 7 amended by No. 37 of 1964 s. 4.]

Part III — Entitlements to long service leave or to payment in lieu thereof

8. Long service leave

- (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 section 6(4) to be one and the same employer.
- (2) An employee who has completed at least 10 years of such continuous employment, as is referred to in subsection (1), is entitled to an amount of long service leave as follows —
 - (a) in respect of 10 years so completed, $8\frac{2}{3}$ weeks;
 - (b) in respect of each 5 years' continuous employment so completed after such 10 years, $4\frac{1}{3}$ 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 $8\frac{2}{3}$ weeks for 10 years of such continuous employment.
- (3) Where an employee has completed at least 7 years of such continuous employment since the commencement thereof, but less than 10 years, and the employment is terminated —
 - (a) by his death; or
 - (b) for any reason other than serious misconduct,the amount of leave to which the employee is entitled shall be a proportionate amount on the basis of $8\frac{2}{3}$ weeks for 10 years of such continuous employment.

- (4) If an employee has completed at least 9 but less than 15 years continuous employment prior to the commencement day, then, despite subsection (2)(a), the employee cannot take long service leave under subsection (2)(a) until after —
- (a) if the employee has completed at least 14 years continuous employment prior to the commencement day — completing 15 years continuous employment; or
 - (b) in any other case — 12 months after the commencement day.
- (5) Subsection (4) does not apply if the employee and his or her employer agree to that effect in writing.
- (6) Subsection (4) does not apply in respect of a period of continuous employment prior to the commencement day in respect of which the employee has become entitled to take long service leave.
- (7) An employee who becomes entitled to take long service leave under subsection (2)(a) in accordance with subsection (4) or (5) also becomes entitled to take long service leave under subsection (2)(b), in respect of the period of continuous employment that exceeds 10 years, pro rata.
- (8) Subsection (7) does not apply to an employee if, before being granted the long service leave, the employee completes 15 years continuous employment.
- (9) If an employee takes long service leave in accordance with subsection (7), the employee is entitled, after completing 15 years continuous employment, to take the remainder of his or her entitlement under subsection (2)(b) not already taken in accordance with subsection (7).
- (10) In subsections (4) and (6) —
- “commencement day”** means the day on which the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 came into operation.

[Section 8 inserted by No. 37 of 1964 s. 5; amended by No. 79 of 1995 s. 49; No. 36 of 2006 s. 56.]

[8A. Repealed by No. 36 of 2006 s. 57.]

9. Commencement of long service leave

- (1) Where an employee becomes entitled to a period of long service leave under this Act the leave is to be granted and taken —
 - (a) subject to any agreement between the employer and the employee, as soon as reasonably practicable after it becomes due; and
 - (b) in one continuous period, or if the employer and the employee so agree, in separate periods of not less than one week.
- (1a) Where an employer and employee have not agreed when the employee is to take the employee's long service leave, subject to subsection (1b), the employer is not to refuse the employee taking, at any time suitable to the employee, any period of long service leave to which the employee became entitled more than 12 months before that time.
- (1b) The employee is to give to the employer at least 2 weeks' notice of the period during which the employee intends to take the long service leave.
- (2) In a case to which section 8(2)(c) or section 8(3) 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 termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

- (3) An employee is to be paid for a period of long service leave at the time payment is made in the normal course of the employment, unless —
- (a) the employee requests in writing to be paid before the period of leave commences, in which case the employee is to be so paid; or
 - (b) the employee and employer agree to another method of payment.
- (4) If —
- (a) a public holiday occurs during a period of long service leave taken by an employee under section 8(2)(a) or (b); and
 - (b) the employee is otherwise entitled to that holiday under the employee's conditions of employment,

the period of long service leave is increased by one day for each such public holiday.

[Section 9 amended by No. 37 of 1964 s. 6; No. 79 of 1995 s. 51; No. 36 of 2006 s. 58.]

10. Taking leave in advance

- (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.
- (2) Where leave has been granted to an employee pursuant to subsection (1) 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.

[Section 10 amended by No. 37 of 1964 s. 7.]

Part IV — Enforcement of the provisions of the Act

[Heading inserted by No. 79 of 1995 s. 52.]

11. Industrial magistrate's courts

- (1) An industrial magistrate's court has jurisdiction to hear and determine all questions and disputes in relation to rights and liabilities under this Act, including without limiting the generality of the foregoing, questions and disputes —
 - (a) as to whether a person is or is not an employee, or an employer, to whom this Act applies;
 - (b) 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;
 - (c) as to the ordinary rate of pay of an employee;
 - (d) as to whether the employment of the employee was or was not ended by an employer in order to avoid or to attempt to avoid liability for long service leave; and
 - (e) with respect to a benefit in lieu of long service leave under an agreement made under section 5.
- (2) Jurisdiction granted under subsection (1) is exclusive of any other court except where an appeal lies to that other court.

[Section 11 inserted by No. 79 of 1995 s. 52.]

12. Industrial inspectors may institute proceedings

An industrial inspector may institute proceedings under section 11 in his or her own name, whether or not an employee is to be a party to the proceedings.

[Section 12 inserted by No. 36 of 2006 s. 59.]

[13-17. Repealed by No. 79 of 1995 s. 52.]

[Parts V and VI (s. 18-22) repealed by No. 79 of 1995 s. 52.]

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

[24. Repealed by No. 79 of 1995 s. 52.]

Part VII — Miscellaneous provisions

[Division 1 (s. 25) repealed by No. 79 of 1995 s. 53.]

Division 2 — Records of employment

26. Keeping of employment records

- (1) An employer must ensure that details are recorded of —
 - (a) each employee's name and, if the employee is under 21 years of age, the employee's date of birth;
 - (b) the date on which the employee commenced employment with the employer;
 - (c) the gross and net amounts paid to the employee under the contract of employment, and all deductions and the reasons for them;
 - (d) all leave taken by the employee, whether paid, partly paid or unpaid;
 - (e) details of any agreement made under section 5 between the employer and the employee;
 - (f) such other details as are necessary for the calculation of the entitlement to, and payment for, long service leave under this Act; and
 - (g) other matters prescribed by the regulations.
- (2) The employer must ensure that —
 - (a) the records are kept in accordance with the regulations; and
 - (b) each entry is retained during the employment of the employee and for not less than 7 years thereafter.
- (3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.

- (4) Subsection (3) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 unless the employer was charged with an offence in respect of that contravention.

[Section 26 inserted by No. 79 of 1995 s. 54; amended by No. 36 of 2006 s. 60.]

26A. Access to records kept by employer

- (1) An employer, on request in writing by a relevant person, must —
- (a) produce to the person the records under section 26 relating to an employee to whom that section applies; and
 - (b) let the person inspect the records.
- (1a) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (1b) Subsection (1a) extends to a contravention that occurred within the period of 12 months ending on the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 unless the employer was charged with an offence in respect of that contravention.
- (2) Relevant persons are —
- (a) the employee or a person authorised in writing by the employee; and
 - (b) an industrial inspector.
- (3) The duty placed on an employer by subsection (1) —
- (a) continues so long as the record is required to be kept under section 26(2)(b);
 - (b) is not affected by the fact that the employee is no longer employed by the employer;

- (c) includes the further duties —
 - (i) to let the relevant person enter premises of the employer for the purposes of inspection of the records; and
 - (ii) to let the relevant person take copies of, or extracts from, the records;and
- (d) must be complied with not later than the end of the next pay period after the request for inspection is received.

[Section 26A inserted by No. 79 of 1995 s. 54; amended by No. 36 of 2006 s. 61.]

Division 3 — Prohibition of employment during long service leave

27. Prohibition of employment during long service leave

- (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.
- (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 section 9(2), is deemed to commence a period of leave on the day of the termination of his employment.

[Division 4 (s. 28-31) repealed by No. 79 of 1995 s. 55.]

[Division 5: s. 32-34 repealed by No. 79 of 1995 s. 56;
s. 35 and 36 repealed by No. 36 of 2006 s. 62.]

Division 6 — Representation of parties in proceedings under this Act

37. Representation of parties in proceedings under this Act

Any person who is a party to proceedings under this Act, may appear in person or be represented by a certificated practitioner (within the meaning of the *Legal Practice Act 2003*) or by the person's agent duly appointed for that purpose.

[Section 37 amended by No. 79 of 1995 s. 58; No. 65 of 2003 s. 50.]

Division 7 — Regulations

38. Regulation making power

- (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.
- (2) Without limiting the generality of the power conferred by subsection (1), the Governor may make regulations prescribing as penalties for breaches of regulations so made penalties not exceeding in amount the sum of \$1 000.

[Section 38 amended by No. 113 of 1965 s. 8; No. 79 of 1995 s. 59.]

39. Application to this Act of certain of the regulations made under the *Industrial Relations Act 1979*

To the extent to which the provisions of the regulations made under the *Industrial Relations Act 1979* 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.

[Section 39 amended by No. 79 of 1995 s. 60.]

Notes

- ¹ This is a compilation of the *Long Service Leave Act 1958* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Long Service Leave Act 1958</i>	44 of 1958	12 Dec 1958	24 Dec 1958 (see s. 2 and <i>Gazette</i> 24 Dec 1958 p. 3371)
Reprint of the <i>Long Service Leave Act 1958</i> authorised 30 Jan 1963			
<i>Long Service Leave Act Amendment Act (No. 2) 1964</i>	37 of 1964	12 Nov 1964	12 Nov 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<i>Long Service Leave Act Amendment Act 1973</i>	97 of 1973	27 Dec 1973	1 Mar 1974 (see s. 2 and <i>Gazette</i> 1 Mar 1974 p. 648)
Reprint of the <i>Long Service Leave Act 1958</i> approved 11 Jul 1974 (includes amendments listed above)			
<i>Acts Amendment (Industrial Magistrate's Courts) Act 1991 Pt. 4</i>	44 of 1991	17 Dec 1991	3 Jan 1992 (see s. 2 and <i>Gazette</i> 3 Jan 1992 p. 41)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995 Pt. 8⁵</i>	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
<i>Labour Relations Reform Act 2002 s. 20</i>	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
Reprint 3: The <i>Long Service Leave Act 1958</i> as at 16 May 2003 (includes amendments listed above)			
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 7 (see <i>Gazette</i> 15 Aug 2003 p. 3685-92)</i>			15 Sep 2003 (see r. 2)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 50</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

Long Service Leave Act 1958

Short title	Number and year	Assent	Commencement
<i>Labour Relations Legislation Amendment Act 2006</i> Pt. 7 Div. 2 ⁶	36 of 2006	4 Jul 2006	4 Jul 2006 (see s. 2(1))

² Repealed by the *Statute Law Revision Act 1950* of the Commonwealth.

³ Repealed by the *Defence Legislation Amendment Act 1992* of the Commonwealth.

⁴ Repealed by the *Industrial Relations (Consequential Provisions) Act 1988* of the Commonwealth.

⁵ The *Industrial Relations Legislation Amendment and Repeal Act 1995* Pt. 8 Div. 2 reads as follows:

“

Division 2 — Transitional and saving

61. General transitional provisions

(1) In this Division —

“**amended provisions**” means the Long Service Leave Act as amended by this Part;

“**commencement day**” means the day on which this Part comes into operation;

“**former provisions**” means the Long Service Leave Act as in force before the commencement day.

(2) On the commencement day —

(a) notwithstanding the definition of “**employee**” in the amended provisions, where a person is an employee as defined by section 4 of the former provisions that person is, while in continuous employment (within the meaning of that term in section 6 of the Long Service Leave Act) with his or her employer, to be regarded as an employee for the purposes of the amended provisions; and

(b) where an exemption has been granted under section 5 of the former provisions to an employer in respect of the employees of that employer, that exemption continues until —

(i) an agreement is entered into under section 5 of the amended provisions by that employer with each of the employees of that employer; or

(ii) the expiry of the period of 6 months, or such extended period as is determined in relation to

that employer pursuant to subsection (3), after the commencement day,

whichever is the earlier.

- (3) The Minister may, on the application of an employer who has been granted an exemption under section 5 of the former provisions, extend the period of 6 months referred to in subsection (2)(b)(ii) for such further period as the Minister determines.
- (4) Regulations may be made for any matter if —
 - (a) this section does not make provision or sufficient provision in respect of the matter; or
 - (b) it is necessary or convenient to do so to facilitate the transition to the amended provisions.

62. Pending proceedings continued

- (1) In this section —

“former Board” means the Board of Reference constituted under Part IV of the former provisions;

“Full Bench” means the Full Bench of the Western Australian Industrial Relations Commission as defined in and for the purposes of the *Industrial Relations Act 1979*;

“pending proceedings” means —

 - (a) the reference of any question or dispute to the former Board; or
 - (b) an appeal to the Commission in Court Session, under the former provisions that was commenced before the commencement day.
- (2) Pending proceedings may be continued and dealt with under the former provisions.
- (3) Notwithstanding section 52 or the amended provisions, for the purposes of continuing and dealing with pending proceedings the former Board shall continue as constituted by the former provisions.
- (4) Notwithstanding section 52, the former provisions remain in force to the extent necessary for the purposes of subsections (2) and (3).
- (5) A determination made in pending proceedings shall, for all the purposes of the amended provisions and of any other written law, be deemed to be a determination made by —
 - (a) in the case of proceedings referred to in paragraph (a) of the definition of **“pending proceedings”**, an industrial magistrate; or

(b) in the case of proceedings referred to in paragraph (b) of the definition of “**pending proceedings**”, the Full Bench, under the amended provisions.

63. Jurisdiction over existing matters

Subject to section 62 and the amended provisions an industrial magistrate’s court or the Full Bench, as the case requires, may exercise jurisdiction in relation to a matter whether that matter arose before or after the commencement day.

⁶ The *Labour Relations Legislation Amendment Act 2006* Pt. 7 Div. 3 reads as follows:

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Division 3 — Repeal of the LSL General Order

63. Meaning of terms used in this Division

In this Division —

“**Commission**” means The Western Australian Industrial Relations Commission;

“**employer**” has the meaning given to that term in the *Long Service Leave Act 1958* section 4;

“**industrial instrument**” means —

- (a) an award under the Coal Industry Tribunal of Western Australia Act 1992;
- (b) an order under the *Coal Industry Tribunal of Western Australia Act 1992* or an agreement that comes within section 12(4) or 17(1) of that Act;
- (c) an award as defined in the *Industrial Relations Act 1979* section 7(1);
- (d) an industrial agreement as defined in the *Industrial Relations Act 1979* section 7(1);
- (e) an order of the Commission under the *Industrial Relations Act 1979*;
- (f) an employer-employee agreement under the *Industrial Relations Act 1979* Part VID; or
- (g) any other agreement between a person and an employer, as such, that deals with long service leave;

“**LSL General Order**” means the General Order relating to long service leave made by the Commission on 27 January 1978 and published in the *Western Australian Industrial Gazette* on 22 February 1978 at page 120 and the Schedule attached

to that order published in that *Gazette* on 25 January 1978 at pages 1 to 6.

64. LSL General Order repealed

The LSL General Order is repealed.

65. Transitional provision — references to the LSL General Order

- (1) The object of this section is to ensure that where, before commencement, a person's long service leave rights, entitlements or obligations arose under an industrial instrument by reference to the LSL General Order that person's long service leave rights, entitlements or obligations arise, after commencement, under the instrument by reference to the *Long Service Leave Act 1958*.
- (2) Unless the contrary intention appears or the context otherwise requires, a reference in an industrial instrument to the LSL General Order, or a provision of that Order, is, after commencement, to be read as a reference to the *Long Service Leave Act 1958*, or the corresponding provision of that Act, (whichever is relevant) and the instrument is to be construed so as to give effect to the object of this section.
- (3) Subsection (2) applies to references that, after commencement, have ongoing effect.
- (4) A provision of the *Long Service Leave Act 1958* corresponds to a provision of the LSL General Order if the provisions deal with substantially the same matter.
- (5) In this section —
“**commencement**” means the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2.

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