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Dated 13 March 2019



TASMANIA

LONG SERVICE LEAVE ACT 1976

No. 95 of 1976

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LONG SERVICE LEAVE ACT 1976

No. 95 of 1976

An Act to amend and consolidate the law relating to the granting of long service leave to employees, and for matters incidental thereto

[Royal Assent 15 December 1976]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title and repeal

- (1) This Act may be cited as the *Long Service Leave Act 1976*.
- (2) The Acts that are specified in Schedule 1 are repealed.

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2. Interpretation

(1) In this Act, unless the contrary intention appears

—

age for retirement means —

- (a) in a case where an age for retirement is prescribed in an industrial award that is applicable to an employee, or is fixed by the terms of an employee's contract of employment — the age so prescribed or fixed; or
- (b) in any other case — the age of 65 years, in the case of a male, or 60 years in the case of a female;

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

Commission means the Tasmanian Industrial Commission constituted under the *Industrial Relations Act 1984*;

Commissioner means a person appointed and holding office as a member of the Commission;

employee means a person who is employed by an employer to do any work for hire or reward, and includes an apprentice or any other person whose contract of employment requires him to learn or be taught any business;

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employer means a person by whom an employee is employed, and includes the Crown;

Full Bench means a Full Bench of the Commission constituted in accordance with section 14 of the *Industrial Relations Act 1984*;

industrial dispute means a dispute in relation to any matter affecting or relating to the relations of employers and employees in any business, or their respective rights, privileges, duties, or obligations;

inspector means a person who is appointed as an inspector for the purposes of this Act or is an inspector by virtue of section 4(1), and includes the Secretary;

metalliferous mine means –

- (a) a place, open cut, quarry, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode, or reef in or by which an operation is carried on for or in connection with the purpose of obtaining a mineral substance by any manner or method; or
- (b) a place adjoining a metalliferous mine within the meaning of paragraph (a) on which a product of that mine is stacked, stored, crushed, or otherwise treated –

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and includes –

- (c) a place where 2 or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for a mineral substance, whether by drilling, boring, or any other method; and
- (d) so much of the surface of a place and the buildings, workshops, change-houses, structures, and works on that place surrounding or adjacent to the shaft, outlets, or site of a metalliferous mine, within the meaning of a preceding paragraph of this definition, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety, or welfare of persons employed in, at, or about the mine;

mining employee means an employee who is employed in, at, or about a metalliferous mine;

Secretary means the Secretary of the Department;

transmission, used in relation to an employer's business, includes any

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transfer, conveyance, assignment, or succession, whether by agreement or by operation of law;

workers' compensation means compensation payable under –

- (a) the *Workers Rehabilitation and Compensation Act 1988*; or
 - (ab) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; or
 - (b) the *Workers' (Occupational Diseases) Relief Fund Act 1954* or a scheme substituted for the provisions thereof under section 41 of that Act.
- (2) Where an employee is employed in or about any place in the business of an employer and the employment of the employee with that employer is terminated, and, not later than the expiration of a period of 2 months from the date on which that employment was so terminated, the employee becomes employed in or about that place in the business of some other employer, the business of the employer by whom his employment has been terminated shall, for the purposes of this Act, be deemed to have been transmitted to the employer by whom he so becomes employed if the business in which he so becomes employed is of the same, or substantially the same, kind as the business in

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which he was employed in the employment that has terminated.

(3)

2A. Mineral substances

- (1) The several substances specified in Schedule 2 are mineral substances within the meaning of this Act.
- (2) The Governor may, by order, amend Schedule 2 by adding a substance to, or removing a substance from, that Schedule.

3. Non-application of Act

This Act does not apply to an employee who –

- (a) is an employee within the meaning of the *Long Service Leave (State Employees) Act 1994*; or
- (b)
- (c) is entitled to long service leave under Division 1 of Part 7 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

4. Inspectors

- (1) A person who is an inspector under the *Industrial Relations Act 1984* is, by virtue of his office, an inspector for the purposes of this Act.

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- (2) The Secretary is, by virtue of that office, an inspector for the purposes of this Act.
- (3) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed as inspectors for the purposes of this Act.
- (4) Persons appointed as inspectors for the purposes of the *Long Service Leave Act 1956* shall be deemed to have been so appointed for the purposes of this Act.

5. Nature of continuous employment

- (1) For the purposes of this Act, employment (whether before or after the commencement of this Act) shall be deemed to be continuous notwithstanding –
 - (a) the taking of any annual leave or long service leave;
 - (b) any absence from work of the employee on a public holiday in accordance with the terms of his employment;
 - (c) any absence from work on account of illness or injury that has been certified as necessary by a medical practitioner;
 - (ca) the taking of any maternity leave by the employee in accordance with the terms of her employment;
 - (d) any interruption or ending of the employment by the employer, if the interruption or ending is made with the

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intention of avoiding obligations in respect of long service leave or annual leave;

- (e) any interruption arising directly or indirectly from an industrial dispute, but only if the employee returns to work in accordance with the terms of settlement of the dispute;
- (f) any absence from work, by leave of the employer, for the purpose of the employee attending a meeting of a committee established under the *Training and Workforce Development Act 2013*;
- (g) the termination of the employment of an employee for any reason other than on account of slackness of trade, but only if he is re-employed by the same employer within 3 months after the date of that termination;
- (h) the standing down for a period not exceeding 6 months of an employee on account of slackness of trade, or the termination of employment of an employee who returns to work within a period not exceeding 6 months after the termination of his employment on account of slackness of trade, but only if the return to work by the employee is made within 14 days after –
 - (i) receiving from the employer an offer of re-employment; or

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- (ii) the date on which the employer posts to the employee, by registered letter addressed to the employee at his last-known address, a notice to resume work;
 - (i) any absence from work of the employee for the purpose of –
 - (i) complying with a summons to appear as a juror;
 - (ii) appearing to give evidence before any court or body before which or person before whom persons may by law be required to appear to give evidence; or
 - (iii) complying with any requirement or exercising any right to appear before such a court, body, or person as is referred to in subparagraph (ii), whether as a party to any proceedings or as a witness or otherwise; or
 - (j) any other absence of the employee from work by leave of the employer.
- (2) In calculating the period of continuous employment of an employee, an interruption or absence of any of the kinds to which paragraphs (a), (b), (c), (d), (f), and (i) of subsection (1) relate shall be counted as part of the period of his employment, but an interruption or absence of any of the kinds to which paragraphs (ca), (e), (g), (h), and (j) of that subsection relate shall not

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be counted as part of the period of his employment.

- (3) Without limiting subsections (1) and (2), where an employee is regularly employed by an employer for not less than 32 hours in each consecutive period of 4 weeks, the employee shall be deemed for the purposes of this Act to be continuously employed by the employer, notwithstanding –
- (a) that any of the employment is not full-time employment;
 - (b) that the employee was so employed under 2 or more contracts of employment separately entered into;
 - (c) that, apart from this subsection, the employee would be regarded as being engaged in casual employment; or
 - (d) that the employee engaged in other employment during that period.
- (4) Where a business is, whether before or after the commencement of this Act, transmitted from an employer (in this subsection referred to as “the transmittor”) to another employer (in this subsection referred to as “the transmittee”) and a person who at the time of the transmission was an employee of the transmittor in that business becomes an employee of the transmittee –
- (a) the continuity of the employment of that employee shall be deemed not to have

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- been broken by reason of the transmission; and
- (b) the period of employment of the employee with the transmittee shall be deemed to include the period of his employment, and any period deemed to be a period of his employment, with the transmittor.
- (5) Where an employee transfers from employment with a corporation to employment with a corporation associated with that corporation –
- (a) the continuity of his employment shall be deemed not to have been broken by reason only of his so transferring; and
- (b) the period of his employment with the corporation to employment with which he so transfers shall be deemed to include the period of his employment, and any period deemed to be a period of employment, with the corporation from employment with which he so transfers.
- (6) For the purposes of subsection (5) a corporation shall be deemed to be associated with another corporation if those corporations are related to each other within the meaning of section 50 of the Corporations Act.
- (7) Without prejudice to the provisions of subsection (6), where –

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- (a) an employee is transferred from employment with one corporation to employment with another;
- (b) the directors of each of those corporations are substantially the same or the corporations are under substantially the same management; and
- (c) the employee believes on reasonable grounds that he has remained in employment with the same employer –

this Act has effect in relation to that transfer as if those corporations were associated corporations within the meaning of subsection (5).

- (8) In this section the expressions “corporation” and “director” have respectively the same meanings as they have for the purposes of the Corporations Act.
- (9) Where the employment of an employee who is apprenticed to an employer has been continued by that employer upon or at any time within 3 months after the completion of the apprenticeship, the period of the apprenticeship shall be counted as part of the period of continuous employment of that employee with that employer.
- (10) A period of service by an employee as a member of the naval, military, or air forces (other than as a member of the permanent force) of the Commonwealth shall be deemed to be employment with the employer by whom the

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employee was last employed before he commenced to serve as a member thereof.

- (11) For the purposes of subsection (10), in the case of an employee whose last employment was temporary employment during a stand down period the expression “employer by whom the employee was last employed” means the employer who stood down the employee.

6. Employment before the commencement of this Act

- (1) For the purposes of this Act, the continuous employment of an employee by an employer by whom he is employed at the commencement of this Act shall, subject to this section, be deemed to have commenced on the actual date on which that employee was first employed by that employer before the commencement of this Act.
- (2) Notwithstanding the provisions of subsection (1), in computing an employee’s entitlement to long service leave under this Act –
- (a) continuous employment before the commencement of the *Long Service Leave Act 1956*, to the extent to which it is in excess of 24 years, shall be disregarded; and
 - (b) long service leave (or payment in lieu thereof) granted to the employee in respect of any period of employment that is, under this section, taken into account in computing the employee’s entitlement to long service leave under this Act shall

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be taken into account, and shall be deemed to have been leave taken under this Act.

7. Exemptions

- (1) The Secretary may, subject to such conditions as he thinks fit to impose, exempt an employer from the operation of this Act or a provision of this Act in respect of all or any class of the employees employed by the employer where the Secretary is satisfied that—
 - (a) those employees are, or that class of employee is, under the terms of employment with the employer, entitled, under any scheme established or conducted by or on behalf of that employer, to benefits that are not less favourable to those employees, or that class of employees, than those prescribed by this Act; and
 - (b) it is in the best interests of those employees, or that class of employees, that the exemption should be granted.
- (2) An exemption granted under subsection (1) shall be granted so as to operate for such period, not exceeding 5 years, as the Secretary may determine, and may be renewed so as to operate for such further periods, not exceeding 5 years at any one time, as the Secretary may think desirable.

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- (3) Where the Secretary revokes or refuses to renew an exemption granted under this section, the continuous employment, before the date of the revocation or refusal, of the employees in respect of whom or, as the case may be, of the employees included in the class of employees in respect of which, the exemption was granted shall be taken into account for the purpose of computing their entitlement to long service leave under this Act, but –
- (a) any period of long service leave granted to such an employee before that date pursuant to such a scheme as is referred to in subsection (1)(a) shall be deemed to have been a period of long service leave granted to him under the provisions of this Act; and
 - (b) any sum paid to such an employee in lieu of long service leave before that date pursuant to such a scheme shall be deemed to have been a payment in lieu of long service leave under the provisions of this Act.
- (4) The Secretary shall not grant an exemption under this section in respect of any scheme that does not provide for the granting of long service leave, as such, to the employees to whom the scheme relates.
- (5) Subsection (4) does not apply in respect of a scheme in respect of which an exemption was in force immediately before the commencement of

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the *Long Service Leave Act 1964* or any scheme varying, altering, or amending that scheme.

- (6) The Secretary –
- (a) may of his own motion; and
 - (b) shall, on the application of an organization of employers or of employees or of the relevant employer –
- review any exemption granted by him pursuant to this section before the commencement of the *Long Service Leave Act 1964*.
- (7) If, on such a review as is mentioned in subsection (6), the Secretary is of the opinion that the benefits under the scheme that is the subject of the exemption are not as favourable as those prescribed by this Act or that it is no longer in the best interests of the employees to whom the scheme relates that the exemption should continue to operate, the Secretary may revoke the exemption or may determine that the exemption shall continue to operate only upon and subject to such terms and conditions as he may impose.
- (8) An exemption or the renewal of an exemption granted under the *Long Service Leave Act 1956* shall be deemed to have been granted under this Act at the time it was actually granted.

7A. Entitlement to long service leave

Subject to this Act, an employee is entitled to long service leave on ordinary pay in respect of continuous employment with an employer.

8. Period of long service leave to which employees, other than mining employees, are entitled

- (1) In this section, *employee* means an employee who is not a mining employee.
- (2) Subject to subsection (4), the period of long service leave to which an employee is entitled under this Act is –
 - (a) on the completion by an employee of at least 10 years' continuous employment with his employer–
 - (i) 8 $\frac{2}{3}$ weeks' long service leave in respect of the first 10 years' continuous employment with his employer; and
 - (ii) 4 $\frac{1}{3}$ weeks' long service leave in respect of each additional 5 years' continuous employment with his employer; and
 - (iii) on the termination of his employment, an additional period of long service leave in respect of the number of years' continuous employment with his employer since the last accrual of

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entitlement to long service leave under the foregoing provisions of this paragraph, such period of long service leave as bears the same proportion to 8 2/3 weeks as that number of years bears to 10 years; or

- (b) in the case of an employee to whom this paragraph applies by virtue of subsection (3) who has completed 7 years', but has not completed 10 years', continuous employment with his employer such period of long service leave as bears the same proportion to 8 2/3 weeks as the total period of the employee's continuous employment with his employer bears to 10 years.

(3) Subsection (2)(b) applies to –

- (a) an employee who attains the age for retirement;
- (b) an employee whose employment is terminated on account of illness of such a nature as to justify the termination of that employment;
- (c) an employee who terminates his employment on account of incapacity or domestic or other pressing necessity of such a nature as to justify the termination of that employment; and
- (d) an employee whose employment is terminated by his employer for any

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reason other than the serious and wilful misconduct of the employee.

- (3A) For the purposes of subsection (3), an employee who terminates his employment on or after becoming eligible for a service pension under the *Veterans' Entitlements Act 1986* of the Commonwealth shall be deemed to have attained the age for retirement.
- (4) In the case of an employee whose period of employment with an employer began before the commencement of the *Long Service Leave Act 1964* and whose period of continuous employment with his employer would entitle him to long service leave under this section, the period of long service leave to which that employee is entitled is the total of the following periods, namely:
- (a) a period calculated on the basis of 13 weeks for 20 years' continuous employment before the date of the commencement of that Act; and
 - (b) a period calculated on the basis of 13 weeks for 15 years' continuous employment on and after that date.

8A. Period of long service leave to which mining employees are entitled

- (1) In this section, *employee* means a mining employee.

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- (2) Subject to subsections (3) and (4), the period of long service leave to which an employee is entitled under this Act is –
- (a) on the completion by an employee of at least 10 years' continuous employment with his employer –
 - (i) 13 weeks' long service leave in respect of every period of 10 years' continuous employment with his employer; and
 - (ii) on the termination of his employment, an additional period of long service leave in respect of the number of years' continuous employment with his employer since the last accrual of entitlement to long service leave under subparagraph (i), being such a period of long service leave as bears the same proportion to 13 weeks as that number of years bears to 10 years; or
 - (b) in the case of an employee to whom this paragraph applies by virtue of subsection (3) who has completed 5 years', but has not completed 10 years', continuous employment with his employer, such a period of long service leave as bears the same proportion to 13 weeks as the total period of the employee's continuous

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employment with his employer bears to 10 years.

- (3) Subsection (2)(b) applies to –
- (a) an employee who attains the age for retirement;
 - (b) an employee whose employment is terminated on account of illness of such a nature as to justify the termination of that employment;
 - (c) an employee who terminates his employment on account of incapacity or domestic or other pressing necessity of such a nature as to justify the termination of that employment; and
 - (d) an employee whose employment is terminated by his employer for any reason other than the serious and wilful misconduct of the employee.
- (3A) For the purposes of subsection (3), an employee who terminates his employment on or after becoming eligible for a service pension under the *Veterans' Entitlements Act 1986* of the Commonwealth shall be deemed to have attained the age for retirement.
- (4) In the case of an employee whose period of employment with an employer began before the date fixed by proclamation under section 2 (2) of the *Long Service Leave Amendment Act 1980* (in this subsection referred to as “the proclaimed date”) and whose period of continuous

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employment with his employer would entitle him to long service leave under this section, the period of long service leave to which that employee is entitled is the total of the following periods:

- (a) a period calculated on the basis of 13 weeks for 20 years' continuous employment before the date of the commencement of the *Long Service Leave Act 1964*;
- (b) a period calculated on the basis of 13 weeks for 15 years' continuous employment on and after the date referred to in paragraph (a) and before the proclaimed date;
- (c) a period calculated on the basis of 13 weeks for 10 years' continuous employment on and after the proclaimed date.

9. Payment in lieu of long service leave on death of employee

- (1) If an employee who is entitled to long service leave under this Act dies before or while taking that leave his employer, unless he has paid to the employee, in advance, a sum equal to the amount of his ordinary pay in respect of the period of that leave, shall pay to the employee's personal representatives a sum equal to the amount of ordinary pay that would have been payable to the employee in respect of the period of long service leave not taken by the employee, less any

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amount already paid to the employee in respect of any long service leave not taken by him.

- (2) Where an employee who is not a mining employee dies while he is still in the continuous employment of an employer after having completed –
- (a) more than 10 years' continuous employment with that employer, the employer shall, in addition to any sum payable under subsection (1), pay to the employee's personal representatives, in respect of the period of that continuous employment that is after the last accrual of entitlement to long service leave under section 8(2)(a), a sum equal to the amount of his ordinary pay for a period equalling 1/60th of the first-mentioned period; or
 - (b) at least 7 years', but less than 10 years', continuous employment with that employer, the employer shall pay to the employee's personal representatives a sum equal to the amount of the employee's ordinary pay for a period equalling 1/60th of the period of his continuous employment.
- (3) Where a mining employee dies while he is still in the continuous employment of an employer after having completed –
- (a) more than 10 years' continuous employment with that employer, the

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employer shall, in addition to any sum payable under subsection (1), pay to the employee's personal representatives, in respect of the period of that continuous employment that is after the last accrual of entitlement to long service leave under section 8A(2)(a), a sum equal to the amount of his ordinary pay for a period equalling 1/40th of the first-mentioned period; or

- (b) at least 5 years', but less than 10 years', continuous employment with that employer, the employer shall pay to the employee's personal representatives a sum equal to the amount of the employee's ordinary pay for a period equalling 1/40th of the period of his continuous employment.

10. Payment in lieu of long service leave by agreement

Where an employee becomes entitled to a period of long service leave under this Act, he may, by agreement with his employer, elect to accept payment in lieu of the period of long service leave to which he is so entitled and if he so elects the employer may pay him accordingly a sum equal to the amount of his ordinary pay in respect of a period commencing on the date specified in the election, or, if no date is so specified, the date of the election, and of the length of that period of long service leave.

11. Computation of “ordinary pay”

- (1) Where, for the purposes of this Act, it is necessary to determine the ordinary pay of an employee for any period in respect of any employment (in this section referred to as “the relevant period”), that ordinary pay shall, subject to this section, be reckoned as a sum equivalent to the remuneration that he would reasonably be expected to have received in respect of that period from that employment if he had continued throughout that period to have worked therein.
- (2) For the purposes of subsection (1), the following provisions have effect, namely:
 - (a) it shall be assumed that, throughout the relevant period, the employee works his normal weekly number of hours of work and does not receive, or become entitled to, any payments by way of overtime or as a consequence of his working in excess of that weekly number of hours;
 - (b) where the employee is ordinarily employed on any shift or roster system or any other similar system whereby the times at which he is required to attend at his work vary from time to time, it shall be assumed, subject to paragraph (a), that he continues to be so employed throughout the relevant period;
 - (c) any payments to which the employee may have become entitled by way of disability allowance shall be disregarded;

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- (d) subject to paragraph (e), where the employee is provided with board and lodging by his employer, the cash value thereof shall be regarded as part of his remuneration;
- (e) where, because the work done by the employee is in such a locality as to necessitate his sleeping elsewhere than at his genuine place of residence, or because of other special circumstances, board and lodging are provided, or payments in respect thereof are made, by his employer, the value of that board and lodging and the payments made in respect thereof shall be disregarded;
- (f) subject to paragraphs (d) and (e), the value of any meals or refreshments provided for the employee, or any payments made in respect of meals or refreshments taken by him, shall be disregarded;
- (g) any payments to which an employee may become entitled in respect of his travelling to or from, or in the course of, his work, or the use of a vehicle for that purpose, shall be disregarded;
- (h) any payments that are, or may be, made to an employee at the discretion of his employer by way of bonus shall be disregarded.

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- (3) Subject to the provisions of subsection (2), where the remuneration received by an employee in his employment depends on the results achieved by him, it shall be assumed, for the purposes of subsection (1), that the rate of his remuneration in that employment for the relevant period is the average rate of the remuneration received by him in that employment during the period of 3 months ending on the commencement of that period.
- (4) Subject to subsections (2) and (3), where no ordinary rate of remuneration is fixed for an employee's work under the terms of his employment, the rate of his remuneration in that employment for the relevant period shall be taken to be the average rate of his remuneration in that employment during the period of 12 months ending on the commencement of the relevant period.
- (5) Subsections (3) and (4) apply to a part of the remuneration of an employee as if references therein to his remuneration included references to a part of his remuneration.
- (6) Where no normal weekly number of hours of work is fixed for an employee under the terms of his employment, his normal weekly number of hours of work shall, for the purposes of this section, be taken to be the average weekly number of hours worked by him in that employment during the period of 12 months ending on the commencement of the relevant period.

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- (7) For the purposes of subsection (2), a disability allowance is any allowance payable to an employee as a consequence of his working in specified circumstances, being circumstances that involve, or are likely to involve, special danger, hardship, or inconvenience to the employee, but it does not include any such allowance in any case where it is reasonably to be expected that persons engaged in the type of employment in which the employee is ordinarily engaged would be entitled to that allowance for the whole, or the greater portion, of the time in which they are so engaged.
- (8) The cash value of any board or lodging provided for an employee shall be deemed to be that fixed by or under the terms of his employment or, if it is not so fixed, shall be computed at such rate as may be agreed between the employer and employee or determined by the Secretary on the application of either of them.
- (9) In the computation of the ordinary pay of an employee for a period for the purposes of section 9 or for the purposes of section 12(4), any variation in the terms of his employment that would have come into effect during that period if he had remained in his employment shall be disregarded.

12. How and when long service leave shall be taken

- (1) Subject to this Act, when an employee becomes entitled to long service leave under this Act, that leave shall be granted by the employer as soon

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as practicable after the employee becomes entitled to it, having regard to the needs of the employer's establishment, but –

- (a) the taking of the leave may be postponed to such date as is agreed upon between the employer and the employee or, in default of agreement, as the Secretary, having regard to the problems involved, directs, but no direction by the Secretary under this paragraph shall require the long service leave to commence before the expiration of 6 months after the date of the direction; and
 - (b) in no case is any entitlement to long service leave lost or in any way affected by the foregoing provisions of this subsection or by any failure or refusal of the employer to grant the leave.
- (2) Nothing in subsection (1), or in any agreement or direction made under this section, or in a determination made on an appeal against such a direction, requires an employee to take any long service leave, or any part of any long service leave, during any period in respect of which he is paid, or is entitled to be paid, any sum by way of workers' compensation and in which he is unable to work in his ordinary employment by reason of the injury or disablement in respect of which he is entitled to that workers' compensation.
- (3) Where by virtue of subsection (2) any period of long service leave is not taken at the time agreed,

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directed, or determined under this Act the agreement, direction, or determination shall be of no effect with respect to that period of long service leave, but nothing in this subsection prejudices the making of a further agreement or direction under this section with respect to that period of long service leave.

- (4) Notwithstanding anything in this section, where the employment of an employee is for any reason terminated before he takes any long service leave to which he is entitled, or where any long service leave entitlement accrues to an employee because of the termination of his employment, the employee shall be deemed to have commenced to take his leave on the date of the termination of employment and to be entitled to be paid by his employer ordinary pay in respect of that leave accordingly.
- (5) An employer and employee may agree that any accrued entitlement to long service leave shall be taken in 2 periods, but, except in pursuance of an agreement under this subsection, long service leave shall be taken in one period.
- (6) The ordinary pay of an employee on long service leave shall be paid to him by the employer when the leave is taken, and shall be paid in one of the following ways, namely:
 - (a) in full when the employee commences his leave;
 - (b) at the same times as it would have been paid if the employee were still on duty;

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(c) in any other way agreed upon between
the employer and the employee –

and the right to receive ordinary pay in respect of
that leave accrues accordingly.

- (7) In determining the amount of a payment required to be made in order to comply with subsection (6)(a) any variation in the terms or conditions of the employment of the employee that comes into effect during the period of the long service leave shall be disregarded, but, upon the termination of the period of the long service leave, the employer shall adjust the amount of the payment so as to accord with the variation.
- (8) Where an employee's pay in respect of a period of long service leave is paid in accordance with subsection (6)(b), it shall, if the employee, in writing, so requires, be made by cheque posted to a specified address.
- (9) Long service leave under this Act is not inclusive of any trade holiday, public holiday, statutory holiday as defined in the *Statutory Holidays Act 2000*, or annual leave to which an employee is entitled under the terms of his employment occurring during the period when the leave is taken.
- (10) Except in the case of an employee to whom subsection (4) relates, nothing in this Act requires an employer to grant to an employee leave to which the employee has become entitled under this Act, unless –

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- (a) in the case of an employee who is not a mining employee, the period of leave to which he has become entitled is equal to or greater than $8 \frac{2}{3}$ weeks in respect of his first period of entitlement and $4 \frac{1}{3}$ weeks in respect of a subsequent period of entitlement; and
- (b) in the case of a mining employee, the period of leave to which he has become entitled is equal to or greater than 13 weeks in respect of each of his periods of entitlement.

13. Settlement of disputes

(1) If a dispute –

(a) as to whether or when –

- (i) an employee is or has become entitled to long service leave or payment in lieu of such leave; or
- (ii) a deceased employee's personal representative is or has become entitled to payment in lieu of the employee's long service leave; or

(b) with respect to the rate of ordinary pay of an employee for the purposes of this Act –

occurs, the employer, employee or personal representative, at his or her discretion, may refer the matter to the Secretary for investigation or

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apply, under section 29 of the *Industrial Relations Act 1984*, to the President of the Commission for a hearing by the Commission.

- (1A) On receipt of a referral under subsection (1), the Secretary is to investigate the circumstances of the dispute and submit a report of his or her findings to the President of the Commission.
- (2) Where a dispute referred to the Secretary under subsection (1) is not resolved as a consequence of an investigation by the Secretary, the dispute shall be heard and determined, as prescribed, by a Commissioner.
- (3) Subject to subsection (4), where the determination of a Commissioner under this section on the hearing of a dispute requires the payment of a sum of money by an employer to an employee, the Commissioner shall, without the necessity of any further application, order the employer to pay that sum to the employee.
- (4) Where an appeal is brought under section 14 against the determination of a Commissioner under this section on the hearing of a dispute, an order of the kind referred to in subsection (3) that is made by him shall not take effect until the determination or abandonment of the appeal.

14. Appeals

- (1) Subject to subsection (2), an employer or employee who is aggrieved by –

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- (a) a decision of the Secretary relating to the grant or refusal of an exemption under section 7 or the renewal or refusal to renew an exemption under that section; or
- (b) a determination of a Commissioner under section 13 –

may appeal to a Full Bench.

- (2) An appeal under this section shall be instituted, heard, and determined as prescribed.
- (2A) A Full Bench shall cause a copy of its decision in relation to an appeal under this section to be served on all parties to the appeal.
- (3) The decision of a Full Bench on the hearing of an appeal under this section is final.
- (4) Where the decision of a Full Bench under this section requires the payment of a sum of money by an employer to an employee, the Full Bench may, without the necessity for any further application, order the employer to pay that sum to the employee.

14A. Provision relating to representation at hearings of disputes under section 13 and appeals under section 14

- (1) A person is not entitled to be represented by a practitioner at the hearing of a dispute under section 13 or the hearing of an appeal under section 14.

(2) Where an officer or employee of an organization registered under Part V of the *Industrial Relations Act 1984* is a practitioner, nothing in subsection (1) prevents that officer or employee from representing a person at a hearing referred to in that subsection if he is employed to perform functions that may be performed by persons other than practitioners.

(3) In this section –

practitioner means an Australian legal practitioner.

15. Order for payment of money owing by an employer

(1) An employee, or the personal representative of a deceased employee, may apply to a magistrate, as prescribed, for an order directing the employer to pay to the employee or to his personal representatives, as the case requires, the full amount of any payment that has, at any time during the period of 3 years immediately preceding the date of the application, become due to the employee or to his personal representatives under this Act and the magistrate may make such an order.

(2) The magistrate shall, as prescribed, hear and determine any application made to him pursuant to this section and the determination of the magistrate on the hearing of the application is final.

(3) In any case where the question of a long service leave entitlement has been determined by a

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Commissioner under section 13 or by a Full Bench under section 14, payment of that entitlement shall become due on the day of the determination.

16. Provision as to costs

- (1) A magistrate may, on the hearing of an application under section 15, award costs to any party to the application, and may assess the amount of those costs.
- (2) Where costs are awarded by a magistrate pursuant to this section, those costs are recoverable in the same manner as to costs ordered to be paid to a complainant or defendant in a conviction or an order under the *Justices Act 1959*.
- (3) In the application to costs awarded pursuant to this section of the provisions of the *Justices Act 1959*, any reference in those provisions to a justice, or to 2 or more justices, shall be construed as a reference to a magistrate.

17. Contracting out prohibited

Except as otherwise expressly provided in this Act, the provisions of this Act have effect notwithstanding any covenant, agreement, or arrangement to the contrary (whether entered into or made before or after the commencement of this Act), and no such covenant, agreement, or arrangement operates so as to annul, vary, or exclude any of the provisions of this Act.

18. Records to be kept by employers

An employer shall keep or cause to be kept a long service leave record in such form as may be prescribed and containing the prescribed particulars.

19. Powers of inspectors

- (1) An inspector –
 - (a) may, at any reasonable time, enter, inspect, and examine the premises of an employer, or any place in which he has reasonable cause to believe that a person is employed or that an offence against this Act has been committed;
 - (b) may require an employer to produce, at such time and place as the inspector specifies, the long service leave record required by this Act to be kept by the employer, and inspect or make a copy of, or extract from, that record;
 - (c) may make such examination and inquiry as he thinks necessary to ascertain whether the provisions of this Act have been, or are being, complied with by an employer or an employee; and
 - (d) may exercise such other powers as may be prescribed.
- (2) Nothing in this section shall be construed as conferring on an inspector any authority to enter

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any parts of a building that are used exclusively
for the purposes of a private dwelling.

20. Offences and penalty

- (1) No person shall –
- (a) make a false or misleading statement in, or a material omission from, a long service leave record that he is required by this Act to keep;
 - (b) fail to comply with a requirement or direction lawfully given by an inspector under this Act, or to furnish any information lawfully demanded under this Act by an inspector; or
 - (c) contravene or fail to comply with any provision of this Act that is applicable to him.

Penalty: Fine not exceeding 20 penalty units.

- (2) In proceedings in respect of an offence against the provisions of subsection (1)(a), it is a good defence if it is proved to the satisfaction of the court that the statement or omission complained of resulted from an error made in good faith and without intention to mislead.

21. Time within which proceedings may be commenced

Notwithstanding anything in the *Justices Act 1959*, proceedings in respect of an offence against this Act may be commenced at any time

within one year after the cause of complaint arises.

22. Proceedings to be heard by a magistrate

Proceedings in respect of an offence against this Act shall be heard and determined by a magistrate.

23. Prosecution not a bar to entitlement

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.

24. Regulations

- (1) The Governor may make regulations under this Act.
- (2) In addition to any other matters that may be prescribed, the regulations may impose penalties, not exceeding 0.4 penalty unit, for offences against the regulations.

25. Application of amendments

- (1) For the purposes of this subsection, the *Long Service Leave Act 1956* and this Act are, on the dates on which they respectively commenced,

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taken to have contained the amendment made by section 5(1) of the *Long Service Leave Amendment Act 1979* and, accordingly, an employee who was regularly employed throughout any period is, by virtue of this subsection, taken to have been continuously employed throughout that period for the purposes of the *Long Service Leave Act 1956* or this Act, as the case requires, whether or not his employment had terminated before the commencement of the *Long Service Leave Amendment Act 1979*.

- (2) The amendment made by section 5(2) of the *Long Service Leave Amendment Act 1979* applies only to a period of employment commencing on or after the commencement of that Act.

26. Savings

- (1) The amendments to this Act effected by the *Long Service Leave Amendment Act 1980* do not operate so as to entitle an employee employed in, at, or about a metalliferous mine –
- (a) who has been granted long service leave under this Act before the proclaimed date, to long service leave as provided in section 8A; or
 - (b) who has not been granted long service leave under this Act before the proclaimed date, to long service leave under this Act as it was in force before

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that date as well as to long service leave
as provided in section 8A –

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

- (2) In this section, *proclaimed date* means the date
fixed by proclamation under section 2(2) of the
Long Service Leave Amendment Act 1980.

27. 2011 transitional arrangements

Schedule 3 has effect.

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SCHEDULE 1

Section 1

Number of Act	Title of Act
8 of 1956	<i>Long Service Leave Act 1956</i>
69 of 1960	<i>Long Service Leave Act 1960</i>
74 of 1960	<i>Stevedoring Industry Long Service Leave Act 1960</i>
13 of 1961	<i>Long Service Leave Act 1961</i>
12 of 1963	<i>Long Service Leave Act 1963</i>
50 of 1963	<i>Long Service Leave Act (No. 2) 1963</i>
61 of 1964	<i>Long Service Leave Act 1964</i>
3 of 1965	<i>Long Service Leave Act 1965</i>
11 of 1966	<i>Long Service Leave Act 1966</i>
36 of 1968	<i>Long Service Leave Act 1968</i>
68 of 1972	<i>Long Service Leave Act 1972</i>
86 of 1973	<i>Long Service Leave Act 1973</i>

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SCHEDULE 2 – MINERAL SUBSTANCES

Section 2A

- | | |
|----------------------|---------------------------|
| 1. Alumina | 23. Nickel |
| 2. Antimony | 24. Osmiridium |
| 3. Arsenic | 25. Oxide of iron |
| 4. Arsenical pyrites | 26. Pitchblende |
| 5. Bauxite | 27. Platinoid minerals |
| 6. Bismuth | 28. Platinum |
| 7. Cadmium | 29. Plumbago |
| 8. Chromite | 30. Radioactive minerals |
| 9. Cinnabar | 31. Rutile |
| 10. Cobalt | 32. Scheelite |
| 11. Columbium | 33. Silver |
| 12. Copper | 34. Sulphur |
| 13. Galena | 35. Tantalum |
| 14. Gold | 36. Tin |
| 15. Ilmenite | 37. Titanium |
| 16. Iron | 38. Tungsten and its ores |
| 17. Iron-ore | 39. Vanadium |
| 18. Ironstone | 40. Wolfram |

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- | | |
|-----------------|---------------|
| 19. Lead | 41. Wulfenite |
| 20. Manganese | 42. Zinc |
| 21. Mercury | 43. Zircon |
| 22. Molybdenite | 44. Zirconia |

**SCHEDULE 3 – 2011 TRANSITIONAL
ARRANGEMENTS**

Section 27

1. Interpretation

(1) In this Schedule –

employee means an employee who is not a mining employee;

intermediate continuing employee, of an employer, means an employee who, immediately before the 2011 transition day, had been in continuous employment with the employer for 9 or more years, but less than 12 years;

long-term continuing employee, of an employer, means an employee who, immediately before the 2011 transition day, had been in continuous employment with the employer for 12 or more years;

new continuing employee, of an employer, means an employee who, immediately before the 2011 transition day, had been in continuous employment with the employer for less than 9 years;

new long service leave entitlements means the long service leave entitlements available to and in respect of employees under this Act as amended by the *Long Service Leave Amendment Act 2011*;

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old long service leave entitlements means the long service leave entitlements available to and in respect of employees under this Act immediately before the 2011 transition day;

2011 transition day means the day on which the *Long Service Leave Amendment Act 2011* commences;

2011 transition period means the 12-month period commencing on the 2011 transition day.

- (2) This Schedule prevails over section 8(2) and section 9(2).

2. Transitional arrangements

- (1) In their application to a new continuing employee or long-term continuing employee of an employer, the new long service entitlements take effect in all respects on the 2011 transition day.
- (2) In their application to an intermediate continuing employee of an employer, the new long service entitlements take effect on the 2011 transition day, including the entitlements under section 9(2), but the intermediate continuing employee may not actually take or be granted long service leave under the new long service leave entitlements before the 2011 transition period expires.

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- (3) However, nothing in subclause (2) is to be taken as preventing an intermediate continuing employee of an employer from applying, during the 2011 transition period, for long service leave under the new long service leave entitlements if the application is in respect of long service leave that would be taken after the 2011 transition period expires.
- (4) To avoid doubt, an employee who has exhausted his or her old long service leave entitlements in respect of any period of continuous employment is not entitled to any further long service leave in respect of that period of continuous employment (or any part of it) under the new long service entitlements.

NOTES

The foregoing text of the *Long Service Leave Act 1976* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 10 December 2018 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Long Service Leave Act 1976</i>	No. 95 of 1976	15.12.1976
<i>Statute Law Revision Act 1985</i>	No. 51 of 1985	15.12.1976
<i>Long Service Leave Amendment Act 1979</i>	No. 59 of 1979	21.12.1979
<i>Long Service Leave Amendment Act 1980</i>	No. 34 of 1980	7.8.1980 (ss. 4-14)
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1982</i>	No. 9 of 1982	1.7.1982 (Sched. 10)

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Act	Number and year	Date of commencement
<i>Long Service Leave Amendment Act 1982</i>	No. 61 of 1982	30.11.1982
<i>Industrial Relations (Miscellaneous Amendments) Act 1984</i>	No. 20 of 1984	1.1.1985
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Long Service Leave Amendment Act 1986</i>	No. 80 of 1986	28.11.1986
<i>Administrative Arrangements (Miscellaneous Amendments) Act 1990</i>	No. 5 of 1990	1.7.1990
<i>Penalty Units and Other Penalties Amendment Act 1991</i>	No. 43 of 1991	18.12.1991
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Workers Rehabilitation and Compensation Reform (Consequential Amendments) Act 1996</i>	No. 42 of 1996	16.8.1995
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>Statutory Holidays (Consequential Amendments) Act 2000</i>	No. 82 of 2000	13.12.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Vocational Education and Training Amendment (Tasmanian Learning and Skills Authority) Act 2004</i>	No. 39 of 2004	1.1.2005
<i>Vocational Education and Training Amendment (Skills Tasmania) Act 2007</i>	No. 12 of 2007	1.7.2007
<i>Long Service Leave Amendment Act 2008</i>	No. 61 of 2008	16.12.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011</i>	No. 28 of 2011	31.10.2011
<i>Long Service Leave Amendment Act 2011</i>	No. 41 of 2011	1.7.2012
<i>Training and Workforce Development</i>	No. 11 of 2013	1.7.2013

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Act	Number and year	Date of commencement
<i>(Repeals and Consequential Amendments) Act 2013</i>		
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2018</i>	No. 29 of 2018	10.12.2018

TABLE OF AMENDMENTS

Provision affected	How affected
Section 1	Amended by No. 34 of 1980, s. 4
Section 2	Amended by No. 59 of 1979, s. 4, No. 34 of 1980, s. 5, No. 61 of 1982, s. 3, No. 20 of 1984, s. 3 and Sched. 1, No. 5 of 1990, s. 3 and Sched. 1, No. 68 of 1994, s. 3 and Sched. 1, No. 42 of 1996, s. 3 and Sched. 1 and No. 28 of 2011, s. 37
Section 2A	Inserted by No. 34 of 1980, s. 6
Section 3	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 30 of 1995, s. 3 and Sched. 1
Section 4	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 5 of 1990, s. 3 and Sched. 1, No. 86 of 2000, Sched. 1 and No. 9 of 2003, Sched. 1
Section 5	Amended by No. 59 of 1979, s. 5, No. 9 of 1982, s. 7 and Sched. 10, No. 61 of 1982, s. 4, No. 20 of 1984, s. 3 and Sched. 1, No. 68 of 1994, s. 3 and Sched. 1, No. 42 of 2001, Sched. 1, No. 9 of 2003, Sched. 1, No. 39 of 2004, s. 39, No. 12 of 2007, s. 32 and No. 11 of 2013, Sched. 1
Section 7	Amended by No. 61 of 2008, s. 4
Section 7A	Inserted by No. 34 of 1980, s. 7
Section 8	Amended by No. 34 of 1980, s. 8, No. 80 of 1986, s. 4, No. 9 of 2003, Sched. 1 and No. 41 of 2011, s. 4
Section 8A	Inserted by No. 34 of 1980, s. 9 Amended by No. 80 of 1986, s. 5 and No. 9 of 2003, Sched. 1
Section 9	Amended by No. 34 of 1980, s. 10 and No. 41 of 2011, s. 5
Section 12	Amended by No. 34 of 1980, s. 11, No. 82 of 2000, Sched. 1 and No. 41 of 2011, s. 6
Section 13	Amended by No. 20 of 1984, s. 3 and Sched. 1 and No. 29 of 2018, s. 38
Section 14	Amended by No. 20 of 1984, s. 3 and Sched. 1
Section 14A	Inserted by No. 20 of 1984, s. 3 and Sched. 1 Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 66 of 2007, Sched. 1
Section 15	Amended by No. 61 of 1982, s. 5 and No. 20 of 1984, s. 3 and Sched. 1

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Provision affected	How affected
Section 16	Amended by No. 20 of 1984, s. 3 and Sched. 1
Section 19	Amended by No. 61 of 1982, s. 6
Section 20	Amended by No. 43 of 1991, s. 5 and Sched. 1
Section 24	Amended by No. 9 of 2003, Sched. 1
Section 27	Inserted by No. 41 of 2011, s. 7
Schedule 1	Amended by No. 34 of 1980, s. 12 and No. 51 of 1985, s. 4 and Sched. 2, Part 1
Schedule 2	Inserted by No. 34 of 1980, s. 13
Schedule 3	Inserted by No. 41 of 2011, s. 8