



**LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT ACT 1997**

**No. 50 of 1997**

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**ELIZABETHAE II REGINAE**

**A.D. 1997**

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**No. 50 of 1997**

**An Act to amend the Long Service Leave Act 1987.**

*[Assented to 31 July 1997]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Long Service Leave (Miscellaneous) Amendment Act 1997*.
- (2) The *Long Service Leave Act 1987* is referred to in this Act as "the principal Act".

**Commencement**

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

**Amendment of s. 3—Interpretation**

3. Section 3 of the principal Act is amended—

- (a) by striking out the definition of "agreement" in subsection (1) and substituting the following definition:

"agreement" means—

- (a) an enterprise agreement; or
  - (b) a certified agreement, enterprise flexibility agreement or Australian workplace agreement within the meaning of the *Workplace Relations Act 1996* of the Commonwealth, as in force from time to time;;
- (b) by inserting in paragraph (a) of the definition of "award" in subsection (1) "Relations" after "Industrial";
  - (c) by striking out the definitions of "the Industrial Commission" and "the Industrial Court" in subsection (1) and substituting the following definitions:

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**"enterprise agreement"** means an enterprise agreement within the meaning of the *Industrial and Employee Relations Act 1994*;

**"individual agreement"**, in relation to an employer and a worker, means an agreement (other than an enterprise agreement) individually negotiated between the employer and the worker;

**"the Industrial Relations Commission"** means the Industrial Relations Commission of South Australia;

**"the Industrial Relations Court"** means the Industrial Relations Court of South Australia;

- (d) by striking out from the definition of **"inspector"** in subsection (1) "appointed under the *Industrial Relations Act (S.A.) 1972*" and substituting "under the *Industrial and Employee Relations Act 1994*";
- (e) by striking out from paragraph (a) of the definition of **"registered association"** in subsection (1) "Part IX of the *Industrial Relations Act (S.A.) 1972*" and substituting "the *Industrial and Employee Relations Act 1994*";
- (f) by striking out from paragraph (b) of the definition of **"registered association"** in subsection (1) "*Industrial Relations Act 1988* of the Commonwealth" and substituting "*Workplace Relations Act 1996* of the Commonwealth, as in force from time to time".

**Amendment of s. 5—Long service leave entitlement**

4. Section 5 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) A worker who is entitled to long service leave under subsection (1) becomes entitled to a payment in lieu of the long service leave or a part of the long service leave if an individual agreement to that effect is made and recorded in writing and signed by the employer and the worker after the entitlement to the leave accrues to the worker.

**Amendment of s. 6—Continuity of service**

5. Section 6 of the principal Act is amended by inserting in subsection (1)(a) "Relations" after "Industrial" (twice occurring).

**Amendment of s. 7—Taking of leave**

6. Section 7 of the principal Act is amended by striking out subsections (4) and (5) and substituting the following subsection:

(4) Despite the preceding provisions of this section, an employer and a worker may agree on—

- (a) the deferral of long service leave;
- (b) the taking of long service leave in separate periods;
- (c) the granting and taking of long service leave on less than 60 days notice;
- (d) the taking of long service leave in anticipation of the entitlement to the leave accruing to the worker.

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**Amendment of s. 8—Payment in respect of long service leave**

7. Section 8 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) A payment in lieu of long service leave made under this Act by agreement with a worker—

- (a) will be calculated at the worker's ordinary weekly rate of pay applicable immediately before the payment is made (but not so as to include any amount representing the value of accommodation provided to the worker); and
- (b) must, if a variation in the worker's rate of pay occurs during the period from the date of the payment of a duration equal to the period of leave in lieu of which the payment is made, be followed by a further payment to the worker that reflects the variation in the rate of pay.

**Amendment of s. 9—Exemptions**

8. Section 9 of the principal Act is amended—

- (a) by inserting in subsection (1) "Relations" after "Industrial";
- (b) by inserting in subsection (6) "Relations" after "Industrial".

**Amendment of s. 10—Records**

9. Section 10 of the principal Act is amended—

(a) by inserting after paragraph (b) of subsection (1) the following paragraph:

(ba) any payment made to the worker by agreement in lieu of long service leave;

(b) by inserting after subsection (2) the following subsection:

(2a) An employer who agrees to make a payment to a worker in lieu of long service leave must—

- (a) cause the agreement to be recorded in writing and signed by the employer and the worker; and
- (b) give a copy of the signed written record of the agreement to the worker; and
- (c) keep the signed written record of the agreement for the period referred to in subsection (2)(c).

Penalty: \$1 000;

(c) by striking out from subsection (4)(a) "subsection (1)" and substituting "this section";

(d) by inserting after subsection (6) the following subsection:

(7) When a payment is made to a worker by agreement in lieu of long service leave, the employer must give to the worker a statement in the prescribed form setting out the period of leave in lieu of which the payment is made and the number of days (if any) that will remain due to the worker after the payment is made.

Penalty: \$200.

**Amendment of s. 12—Inspector may direct employer to grant leave or pay amount due**

10. Section 12 of the principal Act is amended—

- (a) by inserting in subsection (2) "Relations" after "Industrial";
- (b) by inserting in subsection (5) "Relations" after "Industrial";
- (c) by inserting in subsection (6)(b) "Relations" after "Industrial".

**Amendment of s. 13—Failure to grant leave**

11. Section 13 of the principal Act is amended—

- (a) by inserting in subsection (1) "Relations" after "Industrial";
- (b) by striking out subsection (5) and substituting the following subsection:

(5) The *Industrial and Employee Relations Act 1994* applies in relation to an application under this section in the same way as to any monetary claim to the Industrial Relations Court under that Act.

**Amendment of s. 16—Act not to apply to certain workers**

12. Section 16 of the principal Act is amended by striking out paragraph (b) and substituting the following paragraph:

- (b) under an award or agreement under the *Workplace Relations Act 1996* of the Commonwealth, as in force from time to time.

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

E. J. NEAL Governor