

<i>Minister for Education—</i>	£
Education Department	1,014,650
Miscellaneous—Minister for Education	84,540
<i>Minister for Lands and Works—</i>	
Public Works Department	131,290
Mines Department	30,500
Miscellaneous—Minister for Works	114,320
Lands and Surveys Department	46,730
Miscellaneous—Minister for Lands	9,510
<i>Minister for Agriculture—</i>	
Department of Agriculture	181,175
Miscellaneous—Minister for Agriculture	55,050
<i>Minister for Health—</i>	
Public Health Department	202,560
Lachlan Park Hospital	133,100
St. John's Park	72,750
Miscellaneous—Minister for Health	500,500
<i>Minister for Housing—</i>	
Housing Department	15,200
<i>Minister for Tourists, Forestry and Police—</i>	
Tourist and Immigration Department	43,480
Forestry Department	2,000
Police Department	246,900
Pensions, &c.	24,800
Sinking Funds, &c.	1,750
	£3,427,100

LONG SERVICE LEAVE.

No. 8 of 1956.

AN ACT to provide for the granting of long service leave to employees, and for matters incidental thereto. [16 May 1956.]

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 This Act may be cited as the *Long Service Leave Act* Short title. 1956.

Interpreta-
tion.

Cf. No. 5711
(Vict.),
s. 150.

2—(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 sixty-five years, in the case of a male, or sixty years, in the case of a female;

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

“Chief Inspector” means the Chief Inspector of Factories appointed under the *Factories Act 1910*;

“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 to be taught any business;

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

“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 subsection (1) of section four, and includes the Chief Inspector;

“ordinary pay” means remuneration for an employee’s normal weekly number of hours of work calculated at his ordinary time rate of pay, as at the time when any period of long service leave granted to him under this Act commences, and, where the employee is provided with board and lodging by his employer, includes the cash value of that board and lodging;

“transmission”, used in relation to an employer’s business, includes any transfer, conveyance, assignment, or succession, whether by agreement or by operation of law.

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

(a) where no ordinary time rate of pay is fixed for an employee’s work under the terms of his employment, the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period of twelve months immediately before the date of the accrual to an employee of his entitlement to long service leave under this Act;

- (b) where no normal weekly number of hours is fixed for an employee under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period referred to in paragraph (a) of this subsection; and
- (c) the cash value of any board or lodging provided for an employee shall be deemed to be its cash value as fixed by or under the terms of the employee's employment or, if it is not so fixed, shall be computed at the rate of twenty shillings a week for board and ten shillings a week for lodging, but so that the value of any board or lodging, or the amount of any payment in respect of board or lodging, is not included in any case where the board or lodging is provided or the payment is made, not as part of his ordinary pay, but 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 any other special circumstances.

3 This Act does not apply to an employee who—

Application
of Act.

- (a) is an employee within the meaning of the *State Employees' (Long-Service Leave) Act 1950*;
- (b) is entitled to long service leave under an award as defined by or under the *Coal Mining Industry Long Service Leave Act 1950*; or
- (c) is entitled to long service leave under the *Municipal Employees' Long-Service Leave Act 1951*.

4—(1) A person who is an inspector under the *Factories Act 1910* is, by virtue of his office, an inspector for the purposes of this Act. Inspectors.

(2) The Chief Inspector is, by virtue of his office, an inspector for the purposes of this Act.

(3) The Governor may, under and in accordance with the provisions of the *Public Service Act 1923*, appoint such and so many persons as he considers necessary as inspectors for the purposes of this Act.

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

What
constitutes
continuous
employment.
Ibid., s. 151.

- (a) the taking of any annual leave or long service leave;
- (b) any absence from work on account of illness or injury, provided that such absence has been certified as necessary by a medical practitioner;

- (c) any interruption or ending of the employment by the employer, if the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (d) 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;
- (e) the dismissal of an employee, if he is re-employed by the same employer within a period not exceeding two months after the date of the dismissal;
- (f) the standing down of an employee on account of slackness of trade, but only if the employee returns to work within fourteen days after—
 - (i) receiving from the employer an offer of re-employment; or
 - (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;
 or
- (g) any other absence of the employee by leave of the employer, or on account of injury arising out of and in the course of his employment.

(2) In calculating the period of continuous employment of an employee, any interruption or absence of a kind mentioned in paragraphs (a) and (c) of subsection (1) of this section shall be counted as part of the period of his employment, but any interruption or absence of a kind mentioned in paragraphs (b), and (d) to (g), of that subsection shall not be counted as part of the period of his employment.

(3) 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 been broken by reason of the transmission; and
- (b) the period of employment that that employee has had with the transmittor or any previous transmittor shall be deemed to be employment of the employee with the transmittee.

(4) Where the employment of an employee who is apprenticed to an employer has, whether before or after the commencement of this Act, been continued by that employer upon or at any time within three 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.

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

(6) For the purposes of subsection (5) of this section, 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—(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.

Employment before the commencement of this Act.
Ibid., s. 152.

(2) Notwithstanding the provisions of subsection (1) of this section, in computing an employee's entitlement to long service leave under this Act—

- (a) continuous employment before the commencement of this Act, to the extent to which it is in excess of twenty-four years, shall be disregarded;
- (b) five-sixths only of the period of the employee's continuous service before the commencement of this Act shall be counted; and
- (c) 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 be taken into account, and shall be deemed to have been leave taken under this Act.

(3) Where the employment of an employee was, for any cause other than serious negligence or wilful misconduct, terminated by his employer at any time within six months before the commencement of this Act, unless it is proved to the satisfaction of the Chief Inspector that the termination of that employment was not connected with or related to the matter of the entitlement or prospective entitlement of that employee to long service leave, that employee shall, for the purposes of this Act, be deemed to have continued to be employed by the employer until the date of the commencement of this Act and to have been dismissed on that date, and if, as on that date, he has (including any period of employment by virtue of this subsection) been in the continuous employment of that employer for a period of not less than fifteen years, that employer shall pay to that employee or his personal representatives, in lieu of long service leave, a sum equal to the amount of his ordinary pay for a period equalling one-eightieth of his period of continuous employment.

(4) For the purposes of subsection (3) of this section, an employee's ordinary pay shall be calculated as if his entitlement under that subsection accrued on the date of the actual termination of his employment.

Exemptions.
Ibid., s. 153.

7—(1) The Chief Inspector may, subject to such conditions as he thinks fit to impose, exempt an employer from the operation of this Act in respect of all or any class of the employees employed by the employer where the Chief Inspector is satisfied that—

- (a) those employees are, or that class of employees 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) of this section shall be granted so as to operate for such period, not exceeding five years, as the Chief Inspector may determine, and may be renewed so as to operate for such further periods, not exceeding five years at any one time, as the Chief Inspector may think desirable.

(3) Where the Chief Inspector revokes or refuses to renew an exemption granted under subsection (1) of this section, the employees in respect of whom, or, as the case may be, the employees included in the class of employees in respect of which, the exemption was granted shall, notwithstanding any other provision of this Act, be deemed to be entitled to long service leave under this Act only in respect of their continuous employment after the date of that revocation or refusal.

Entitlement
to long
service leave.
Ibid., s. 154.

8—(1) Subject to this Act, an employee is entitled to long service leave on ordinary pay in respect of continuous employment with one and the same employer.

(2) 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 twenty years' continuous employment with his employer, thirteen weeks' long service leave in respect of the first twenty years' employment, and thereafter an additional six and a half weeks' long service leave on the completion of each additional ten years of continuous employment with that employer;

(b) in the case of an employee who has completed more than twenty years' continuous employment with his employer and whose employment is terminated—

(i) by the employer, for any cause other than serious negligence or wilful misconduct; or

(ii) by the employee, on account of illness, incapacity, or pressing necessity, where the Chief Inspector certifies, in writing, that, in his opinion, the illness, incapacity, or necessity is of such a nature as to justify the termination,

such period of long service leave as equals one-eighth of the period of his continuous employment since the last accrual of entitlement to long service leave under paragraph (a) of this subsection, in addition to the long service leave to which he is entitled under that paragraph; and

(c) in the case of an employee who has completed at least fifteen but less than twenty years' continuous employment with his employer and whose employment is terminated—

(i) by the employer, for any cause other than serious negligence or wilful misconduct; or

(ii) by the employee, on account of illness, incapacity, or pressing necessity, where the Chief Inspector certifies, in writing, that, in his opinion, the illness, incapacity, or necessity, is of such a nature as to justify the termination,

such period of long service leave as equals one-eighth of the period of his continuous employment.

(3) The Chief Inspector shall furnish to the employee to whom it relates and to his employer a copy of every certificate of the Chief Inspector under sub-paragraph (ii) of paragraph (b), or sub-paragraph (ii) of paragraph (c), of subsection (2) of this section.

(4) Notwithstanding any other provision of this Act, employment (whether before or after the commencement of this Act) before the date on which an employee attains the age of eighteen years does not count for the purpose of computing the employee's entitlement to long service leave under this Act.

9—(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

Payment in lieu of long service leave on death of employee.
Ibid., s. 155.

that would have been payable to the employee in respect of the period of long service leave not taken by the employee, less any amount already paid to the employee in respect of any long service leave not taken by him.

(2) Where an employee who has completed more than twenty years' continuous employment with an employer dies while still in the continuous employment of that employer, the employer (in addition to any sum payable under subsection (1) of this section) shall pay to the employee's personal representatives, in respect of any period of that continuous employment that is after the last accrual of entitlement to long service leave under paragraph (a) of subsection (2) of section eight, a sum equal to the amount of his ordinary pay for a period equalling one-eightieth of the first-mentioned period.

(3) Where an employee who has completed at least fifteen years' but less than twenty years' continuous service with an employer dies while still in the employment of 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 one-eightieth of the period of his continuous employment.

(4) Where an employee becomes entitled to a period of long service leave under this Act, he may, by mutual 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 to him accordingly a sum equal to the amount of his ordinary pay in respect of that period.

How and when long service leave shall be taken.

Ibid., s. 156.

10—(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 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 mutually agreed upon between the employer and the employee or, in default of agreement, as the Chief Inspector, having regard to the problems involved, directs, but no direction by the Chief Inspector under this paragraph shall require the long service leave to commence before the expiration of six 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) Notwithstanding anything in subsection (1) of 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 em-

ployment, 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.

(3) An employer and employee may agree that any accrued entitlement to long service leave shall be taken in two periods, but, except in pursuance of an agreement under this subsection, long service leave shall be taken in one period.

(4) 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 time as it would have been paid if the employee were still on duty; or
- (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.

(5) Where an employee's pay in respect of a period of long service leave is paid in accordance with paragraph (b) of subsection (4) of this section, it shall, if the employee, in writing, so requires, be made by cheque posted to a specified address.

(6) Notwithstanding any other provision of this Act, an employer is not obliged to grant any long service leave to which an employee is entitled under this Act so as to commence before the expiration of the period of four years after the commencement of this Act, except where—

- (a) the employee has attained such an age that, if the leave were not granted before the expiration of that period, he would attain the age for retirement before completing his long service leave; or
- (b) the employee's contract of service with the employer would expire, or the employer proposes to terminate the employee's employment, before the expiration of that period.

(7) Long service leave under this Act is inclusive of any trade holiday, public holiday, or bank holiday occurring during the period when the leave is taken, but is not inclusive of any annual leave occurring during that period.

11 A dispute—

- (a) as to whether or when an employee is or has become entitled to long service leave or payment in lieu thereof, or a deceased employee's personal representatives are or have become entitled to payment in lieu of long service leave; or
- (b) with respect to the rate of ordinary pay of an employee for the purposes of this Act,

Settlement
of disputes.
Ibid., s. 157.

shall be referred to, and heard and determined by, the Chief Inspector, as prescribed.

Appeals.

12—(1) An employer or employee who is aggrieved by—

(a) a certificate of the Chief Inspector under subparagraph (ii) of paragraph (b), or subparagraph (ii) of paragraph (c), of subsection (2) of section eight; or

(b) any decision or determination of the Chief Inspector under this Act (including any decision relating to the grant or refusal of an exemption under section seven, or the renewal or refusal to renew any exemption granted under that section),

may appeal therefrom to a police magistrate.

(2) An appeal under this section shall be instituted, heard, and determined as prescribed.

(3) The decision of a police magistrate on the hearing of an appeal under this section is final.

Order for payment of moneys owing by an employer.

13—(1) An employee, or the personal representatives of a deceased employee, may apply to a police magistrate, as prescribed, for an order directing the employer to pay to the employee or to his personal representatives the full amount of any payment that has, at any time during the period of one year immediately preceding the date of the application, become due to the employee or to his personal representatives under this Act.

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

Provisions as to costs.

14—(1) A police magistrate may, on the hearing of an appeal under section twelve or an application under section thirteen, award costs to any party to the appeal or application, and may assess the amount of those costs.

(2) Where costs are awarded by a police magistrate pursuant to this section, those costs are recoverable in the same manner as costs ordered to be paid to a complainant or defendant in a conviction or an order under the *Justices Procedure Act 1919* and the provisions of sections one hundred and seventeen to one hundred and twenty-seven of that Act apply accordingly.

(3) In the application to costs awarded pursuant to this section of the provisions mentioned in subsection (2) of this section, any reference in those provisions to a justice, or to two or more justices, shall be construed as a reference to a police magistrate.

15 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.

Contracting out prohibited.
Ibid., s. 160.

16 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.

Records to be kept by employers.
Ibid., s. 162.

17—(1) An inspector—

- (a) may, at any reasonable time, enter, inspect, and examine the premises of an employer, or any premises in which he has reasonable cause to suspect that an employee is employed in contravention of this Act;
- (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.

Powers of inspectors.
Ibid., s. 186.

(2) Nothing in this section shall be construed as conferring on an inspector any authority to enter any parts of a building that are used exclusively for the purposes of a private dwelling.

18—(1) An amount that is due and owing by an employer to an employee, or to the personal representatives of an employee, under this Act remains due and owing until paid and, without prejudice to any other mode of recovery, may be recovered in accordance with section forty-seven of the *Wages Boards Act 1920* as if that amount were moneys due to an employee for wages payable under a determination made under that Act, and that section, as modified by subsection (2) of this section, and with such other adaptations and modifications as may be necessary shall be deemed to apply to and in respect of the recovery thereof accordingly.

Recovery of amounts unpaid to an employee under this Act.
Ibid., s. 164.

(2) Section forty-seven of the *Wages Boards Act 1920*, in its application to proceedings under this section for the recovery of any amount that is due and owing by an employer to an employee, has effect as if the words "nine months", wherever occurring therein, were omitted therefrom and the words "twelve months" were substituted therefor in each case.

Offences and
penalty.
Ibid., s. 163.

19—(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: One hundred pounds.

(2) In proceedings in respect of an offence against the provisions of paragraph (a) of subsection (1) of this section, 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.

Time within
which pro-
ceedings may
be com-
menced.

20 Notwithstanding anything in the *Justices Procedure Act 1919*, proceedings in respect of an offence against this Act may be commenced at any time within one year after the cause of complaint arises.

Proceedings
to be heard
by a police
magistrate.

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

Prosecution
not a bar to
entitlement.

22 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.

Regulations.

23—(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 twenty pounds, for offences against the regulations.