



## LONG SERVICE LEAVE (CASUAL EMPLOYMENT).

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 No. 29 of 1973.  
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 AN ACT to amend the *Long Service Leave (Casual Employment) Act 1971*. [10 July 1973.]

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—(1) This Act may be cited as the *Long Service Leave (Casual Employment) Act 1973*. Short title and citation.

(2) The *Long Service Leave (Casual Employment) Act 1971* is in this Act referred to as the Principal Act.

Interpretation.

**2** Section two of the Principal Act is amended by inserting, after the definition of “relevant employment”, the following definition:—  
 “ ‘Review Committee’ means the Long Service Leave (Casual Employment) Fund Review Committee appointed under section twelve A;”.

Employment to which the Act applies.

**3** Section three of the Principal Act is amended by omitting subsection (3) and substituting therefor the following subsection:—

“(3) A period of relevant employment of less than one full working day’s duration shall be disregarded for the purposes of this Act.”.

Long service leave contributions by employers.

**4** Section eight of the Principal Act is amended—

(a) by omitting from subsection (1) the word “Where” and substituting therefor the words “Subject to subsection (1A) of this section, where”; and

(b) by inserting after that subsection the following subsection:—  
 “(1A) No long service leave contribution is payable under subsection (1) of this section in respect of a period of relevant employment if the period commencing on the day on which that employment commences and ending on the day on which it terminates is a period of less than seven days.”.

Entitlement to long service leave payments.

**5** Section nine of the Principal Act is amended—

(a) by omitting from subsection (3) the word “ten” and substituting therefor the word “seven”;

(b) by omitting from subsection (5) the word “eight” and substituting therefor the word “seven”; and

(c) by omitting from subsection (6) the word “eight” and substituting therefor the word “seven”.

Amount of long service leave payments.

**6** Section ten of the Principal Act is amended by inserting in paragraph (a) of subsection (2), after the words “in the”, the word “relevant”.

**7** Section eleven of the Principal Act is repealed and the following section is substituted therefor:—

Computation of “ordinary pay”.

“11—(1) Where, for the purposes of this Act, it is necessary to determine the ordinary pay of an employee for any period (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 he would reasonably be expected to have received in respect of that period in the relevant employment in which he was engaged immediately before the commencement thereof, assuming that he continued in that employment throughout that period.

“(2) For the purposes of subsection (1) of this section the following provisions have effect, that is to say:—

- (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) of this subsection, that he continues to be so employed throughout the relevant period;
- (c) Any payments to which the employee may become entitled by way of disability allowance shall be disregarded;
- (d) Any allowance paid to an employee by his employer in respect of the provision by the employer of tools or other equipment required in his work shall be regarded as part of the remuneration of that employee;
- (e) Subject to paragraph (f) of this subsection, where the employee is provided with board and lodging by his employer the cash value thereof shall be regarded as part of his remuneration;
- (f) 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;
- (g) Subject to paragraphs (e) and (f) of this subsection the value of any meals or refreshments provided for the employee, or any payments made in respect of meals or refreshment taken by him, shall be disregarded;

- (b) 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; and
- (i) Any payments that are, or may be, made to an employee at the discretion of his employer by way of bonus shall be disregarded.

“(3) Subject to the provisions of subsection (2) of this section 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) of this section, 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 three months ending on the commencement of that period.

“(4) Subject to subsections (2) and (3) of this section 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 throughout the period of twelve months ending on the commencement of the relevant period.

“(5) Subsections (3) and (4) of this section apply to a part of the remuneration of an employee as if reference 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 in that employment 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 twelve months ending on the commencement of the relevant period.

“(7) Where the relevant employment with a particular employer in which an employee was engaged at the commencement of the relevant period, or the relevant employment of an employee with a particular employer that terminated at the commencement of the relevant period, commenced less than twelve months before the commencement of the relevant period, the following provisions have effect, that is to say:—

- (a) If that relevant employment commenced less than three months before the commencement of the relevant period, subsection (3) of this section has effect as if for the reference to the period of three months mentioned therein there were substituted a reference to the whole period of that relevant employment; and
- (b) Subsections (4) and (6) of this section have effect as if for the references to the periods of twelve months mentioned therein there were substituted references to the whole period of that relevant employment.

“(8) For the purposes of subsection (2) of this section 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.

“(9) Where an employee has died any variation in the terms or conditions of his employment that, had he lived, would have come into effect after the date of his death shall be disregarded for the purposes of this section.”.

**8** After section twelve of the Principal Act the following sections are inserted:—

“12A—(1) For the purposes of this Act there shall be a committee to be known as the Long Service Leave (Casual Employment) Fund Review Committee. Review Committee.

“(2) The Review Committee shall consist of the Secretary, who shall be the chairman of the committee, and two other persons appointed by the Minister—

- (a) one of whom shall be appointed on the nomination of the Tasmanian Chamber of Industries; and
- (b) one of whom shall be appointed on the nomination of the Tasmanian Trades and Labour Council.

“(3) If an organization referred to in subsection (2) of this section ceases to exist, or ceases to exist under the name mentioned therein, the Governor may by new order substitute for that organization some other organization that he is satisfied—

(a) in the case of the organization specified in paragraph (a) of that subsection, sufficiently represents the interests of employers in the State; and

(b) in the case of the organization specified in paragraph (b) of that subsection, sufficiently represents the interests of persons employed in the State.

“(4) Where a member of the Review Committee is required to be appointed on the nomination of any organization and no person is nominated for that appointment in accordance with directions given by the Minister in that behalf he may appoint some person he considers suitable as a member of the committee in the place of the member so required to be appointed.

“(5) A member of the Review Committee (other than the chairman) holds office on the terms of the instrument by which he was appointed; but he may resign his office by notice given to the Minister.

“(6) The chairman of the Review Committee, or, if he is absent or there is no chairman, such one of the other members present as they may choose, shall preside at each meeting of the committee.

“(7) The chairman or other person presiding at a meeting of the Review Committee has a deliberative vote, but in the event of an equality of votes on any matter before a meeting of the committee, the chairman, if he is present, may exercise a second or casting vote and, if that right is not exercised, the matter stands adjourned to the next meeting of the Board.

“(8) Two members of the Review Committee constitute a quorum at any meeting of the committee.

“(9) Subject to this Act the Review Committee may regulate its own proceedings.

“(10) The Minister may make arrangements for the appointment of a secretary of the Review Committee and for the provision for the committee of such accommodation and assistance as it may require.

“12B The Review Committee shall, as soon as practicable after the expiration of each period of three years following the commencement of this Act, and at such other times as the Minister may require inquire into the state of the Fund and report on the results of the

inquiry, making such recommendations with respect to the prescribing of a proportion for the purposes of section eight as it thinks proper.

“ 12c—(1) Where, in the case of an employee, an entitlement to a long service leave payment has not arisen an employer is entitled to be refunded the long service leave contributions paid into the Fund in respect of that employee if—

Return of long service leave contributed in certain cases.

- (a) a period of relevant employment of the employee is terminated by his death; or
- (b) a period of relevant employment of the employee is terminated—
  - (i) by reason of illness or incapacity; or
  - (ii) on or after his attaining the age of retirement, and he has not subsequently engaged in any relevant employment and the Review Committee is satisfied that he is unlikely again to so engage.

“(2) An application for a refund under this section shall be made to the Review Committee in such manner as it may approve and on being notified by the Review Committee that the person making the application is entitled to the refund, the Treasurer shall make the necessary payment to him from the Fund.”.

**9**—(1) Section three of this Act does not apply in respect of any relevant employment that has terminated before the commencement of this Act.

Application of Act.

(2) Section seven of this Act does not apply in relation to the determination of the amount of a long service leave payment—

- (a) if application for the payment has been made to the Secretary before the commencement of this Act;
- (b) if application for the payment is made by a person who was not engaged in relevant employment at the commencement of this Act and has not since been engaged in relevant employment; or
- (c) if the payment is made in respect of the employment of a person who died before the commencement of this Act.