

*Amended by
Act No. 81 of 1986.*



**LONG SERVICE LEAVE (CASUAL WHARF EMPLOYEES)
ACT 1982**

No. 37 of 1982

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SCHEDULE 1—ACTS REPEALED

AN ACT to provide for the granting of long service leave to persons employed as casual wharf employees and for related matters.

[Royal Assent 19 October 1982]

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 (Casual Wharf Employees) Act 1982*. **Short title.**

(b) the taking of action for the purpose of safeguarding any such ship, cargo, property, or wharf;

(c) the taking of action for the prevention of the unauthorized entry to, or departure from, any such ship or wharf of any person, or the unauthorized taking by any person of property into or from any such ship or wharf;

“employee” means a person who is employed as a casual wharf clerk or a casual wharf watchman;

“employer” means the Association of Employers of Waterside Labour;

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

“Secretary” means the Secretary for Labour;

“ship” includes a barge, lighter, hulk, or other vessel;

“waterside worker” has the meaning assigned to that expression by the *Conciliation and Arbitration Act 1904* of the Commonwealth;

“wharf” includes a pier, jetty, or any shed adjacent to a wharf;

“workers’ compensation” means compensation payable under the *Workers’ Compensation Act 1927* or a scheme of compensation in respect of which a certificate is in force under section 12 of that Act.

4—(1) For the purposes of this Act, the ordinary pay of an employee is, subject to subsection (3), a sum equivalent to the average weekly earnings of the employee during the period of 12 months ending on the date preceding the date on which—

(a) any long service leave to which he is entitled under this Act is granted to him by the employer; or

(b) a determination with respect to that long service leave is made under section 8,

whichever is the earlier date.

“Meaning of ordinary pay”.

(2) Any sum received by an employee during the period referred to in subsection (1) by way of—

- (a) payments for overtime;
- (b) payments or allowances for, or in respect of, shift work;
- (c) penalty rates; or
- (d) other allowances or additions to his wages, excluding travelling allowances,

shall be deemed to be part of his ordinary pay.

(3) Where the ordinary pay of an employee is less than the prescribed sum, that ordinary pay shall be deemed to be a sum equivalent to the prescribed sum.

(4) In this section, “prescribed sum” means a sum equivalent to 28 times the hourly rate of pay prescribed—

- (a) in the case of a casual wharf clerk, in the relevant award made under the *Conciliation and Arbitration Act 1904* of the Commonwealth; and
- (b) in the case of a casual wharf watchman, in the relevant award made under the *Industrial Relations Act 1975* and in force for the time being.

5—(1) The period of qualifying service of a person, in relation to long service leave, is a period (whether before or after, or partly before and partly after, the commencement of this Act) during which that person is or has been continuously employed as a casual wharf clerk or a casual wharf watchman.

(2) For the purposes of this section, employment shall be deemed to be continuous notwithstanding—

- (a) the taking of any annual leave or long service leave;
- (b) absence from work on account of illness or injury where the absence is certified as necessary by a legally-qualified medical practitioner;
- (c) an interruption or ending of the employment by the employer where the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (d) an interruption arising directly or indirectly from an industrial dispute, but only where the employee returns to work in accordance with the terms of settlement of the dispute;

- (e) the dismissal or standing down of an employee where he is re-employed as a casual wharf clerk or a casual wharf watchman within a period not exceeding 2 months after the date of the dismissal or standing down;
- (f) any other absence of the employee on account of an injury in respect of which he is entitled to workers' compensation;
- (g) 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, body, or person before which persons may by law be required to appear to give evidence;
 - (iii) complying with any requirement, or exercising any right to appear before, such a court, body, or person, whether as a party to any proceedings or as a witness or otherwise; or
 - (iv) attending a meeting of a wages board established under the *Industrial Relations Act 1975* as a member of such a board or otherwise exercising his functions as such a member;or
- (h) any other absence of the employee from work by leave of the employer.

(3) In calculating the period of continuous employment of an employee—

- (a) an interruption or absence of a kind referred to in subsection (2) (a), (b), (c), (f), or (g) shall be counted as part of the period of his employment; and
- (b) an interruption or absence of a kind referred to in subsection (2) (d), (e), or (h) shall not be counted as part of the period of his employment.

(4) Where an employee serves for any period as a member of the naval, military, or air forces of the Commonwealth (otherwise than as a member of the permanent force) he shall, if after the expiration of that period of service he again becomes an employee, be deemed to have been an employee during that period of service.

(5) Where an employee, before the commencement of this Act, was employed at any port in this State as a waterside worker, the total period of such employment shall be deemed to be a period of employment as a casual wharf clerk or casual wharf watchman.

Entitlement to long service leave.

6—(1) An employee is entitled to long service leave on ordinary pay as provided in this section.

(2) The period of long service leave to which an employee is entitled is—

(a) in the case of an employee who has completed at least 15 years of any qualifying service—

(i) 13 weeks' long service leave in respect of the first 15 years of the qualifying service;

(ii) 8 and two-thirds weeks' long service leave in respect of each additional 10 years of the qualifying service; and

(iii) on the termination of his employment, such an additional period of long service leave in respect of the number of years of his qualifying service since the last accrual of entitlement to long service leave as bears the same proportion to 13 weeks as that number of years bears to 15 years; or

(b) in the case of an employee who has not completed 15 years of any qualifying service but has completed at least 7 years of any qualifying service and whose employment is terminated—

(i) by an employer for any reason other than serious and wilful misconduct; or

(ii) by the employee, on the employee attaining the age for retirement or on account of illness, incapacity, or domestic or other pressing necessity,

such period of long service leave as bears the same proportion to 13 weeks as the total period of the employee's qualifying service bears to 15 years.

(3) In the case of an employee whose qualifying service began before 17th December 1964 and entitles 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 that date; and

(b) a period calculated on the basis of 13 weeks for 15 years' continuous employment on and after that date.

(4) Any long service leave granted, or any payment in lieu of long service leave made, to an employee pursuant to the *Long Service Leave Act* 1956 in respect of his employment in a permanent capacity during any period before the commencement of this Act—

- (a) shall be taken into account in determining the employee's entitlement to long service leave under this Act; and
- (b) shall be deemed to have been leave taken, or payment received, under this Act.

(5) The period of long service leave to which an employee is entitled in respect of any period of qualifying service occurring before the commencement of this Act is a period not exceeding 13 weeks.

7—(1) Where an employee who has completed at least 15 years of any qualifying service dies while still an employee, the employer shall pay to the employee's personal representative, in respect of any further period of that qualifying service that is after the last accrual of entitlement to long service leave under section 6, a sum equal to the amount of the employee's ordinary pay for a period equalling one-sixtieth of the first-mentioned period less the amount (if any) already paid to the employee in respect of any long service leave not taken by him.

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

(2) Where an employee who has completed at least 7 years of any qualifying service but less than 15 years of any qualifying service dies while still an employee, the employer shall pay to the employee's personal representative a sum equal to the amount of the employee's ordinary pay for a period equalling one-sixtieth of the total period of his qualifying service.

(3) If the employer fails to comply with this section, it is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$200.

8—(1) Where an employee becomes entitled to a period of long service leave, the employer shall, on the application of the employee, determine the period during which that long service leave may be taken.

Taking of long service leave.

(2) In making a determination under this section, the employer shall—

- (a) have regard to the labour requirements of the port at which the applicant for the determination is normally employed; and

(b) endeavour to ensure that the determination authorizes the applicant to take the long service leave to which he is entitled as early as practicable after the application for the determination is made, or at such later date as the applicant may decide upon.

(3) A determination under this section shall be made so as to authorize the long service leave to which the applicant for the determination is entitled to be taken in one complete period, or, where the applicant agrees, in 2 separate periods.

(4) If the employer fails to comply with this section, it is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$200.

Payments in
respect of
long service
leave.

9—(1) Where the period within which an employee may take any long service leave has been determined under this Act, he shall be paid by the employer his ordinary pay for that period.

(2) Except as may otherwise be agreed between the employer and the employee, any sum due to the employee under subsection (1) shall be paid in weekly instalments of, so far as is practicable, equal amounts throughout the period of that long service leave.

(3) Where the qualifying service of an employee terminates as a result of his ceasing to be an employee otherwise than by reason of his death, he shall be paid by the employer his ordinary pay for the period commencing on the day following that on which he ceased to be an employee and equivalent in length to the length of the period of the long service leave to which he was entitled immediately before he ceased to be an employee, less any sum that has already been paid to him by the employer in respect of that long service leave.

(4) Where the qualifying service of an employee terminates by reason of his death, his legal personal representative shall be paid by the employer his ordinary pay for the period commencing on the day following the day of his death and equivalent in length to the length of the period of the long service leave to which he was entitled immediately before his death, less any sum that has already been paid to him by the employer in respect of that leave.

10—(1) A dispute—Settlement
of disputes.

(a) as to whether or when an employee is or has become entitled to long service leave or payment in lieu of long service leave, 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, shall be referred to and determined by the Secretary.

(2) In determining a dispute under this section, the Secretary may act on such information as is available to him and he may inform himself on any matters which he considers relevant.

(3) Where—

(a) the Secretary is of the opinion that a dispute under this section should be determined by the holding of a hearing; or

(b) the employer or an employee requests the Secretary to hold a hearing with respect to the dispute,

the Secretary shall hold the hearing and determine the dispute in the manner prescribed by regulations made under this Act.

11—(1) A person who is aggrieved by a determination of the Secretary under section 10 may appeal to a magistrate. Appeals.

(2) An appeal under this section shall be instituted, heard, and determined in the manner prescribed by regulations made under this Act.

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

(4) Where the decision of a magistrate on the hearing of an appeal under this section requires the payment of a sum of money by the employer to an employee, the magistrate may, without the necessity for any further application, order the employer to pay that sum to the employee.

12—The employer shall keep or cause to be kept a long service leave record in such form as may be prescribed in regulations made under this Act and containing the prescribed particulars. Records to be kept by employers.

Penalty: \$200.

False or misleading statements.

13—A person shall not, for the purpose of obtaining any long service leave or the payment of any sum under this Act for himself or for any other person, make or cause to be made a statement which to his knowledge is false or misleading in a material particular.

Penalty: \$200.

Commencement of proceedings.

14—Notwithstanding the provisions of the *Justices Act* 1959, proceedings in respect of an offence against this Act may be commenced at any time within 1 year after the cause of complaint arose.

Contracting out prohibited.

15—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 or any right or benefit conferred on an employee by this Act.

Regulations.

16—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this section may be made subject to such conditions, or be made to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(3) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding \$200 and where the offence is a continuing one, further penalties not exceeding \$50 for each day during which the offence continues.

(4) A regulation under this section may authorize any matter or thing to be from time to time determined, applied, or regulated by any person or body specified in the regulation.

Transitional provision.

17—All money standing to the credit of the Casual Wharf Clerks Long Service Leave Fund (established under section 4 of the *Long Service Leave (Casual Wharf Clerks) Act* 1966) shall, on the commencement of this Act, be transferred to the Consolidated Revenue Fund.

18—(1) The Treasurer may pay, by way of loan, to the Association of Employers of Waterside Labour such amount as he may determine, not exceeding \$40 000, for the purpose of enabling that Association to meet the payments required by it under this Act. Loan to Association.

(2) The amount paid by the Treasurer under subsection (1) shall be paid out of the Consolidated Revenue Fund and the amount paid is accordingly, by virtue of this subsection, appropriated to the extent necessary.

(3) The amount paid by the Treasurer under subsection (1) shall be repaid by the Association of Employers of Waterside Labour, together with interest, within a period of 5 years after the date on which the payment is made and shall be subject to such terms and conditions, including the rate of interest payable in respect of the loan and the manner in which the principal and interest shall be repaid, as the Treasurer thinks fit.

19—The Acts specified in Schedule 1 are repealed.

Repeal.

SCHEDULE 1

Section 19

ACTS REPEALED

Year and number of Act	Short title of Act
No. 7 of 1966	<i>Long Service Leave (Casual Wharf Clerks) Act 1966</i>
No. 48 of 1978	<i>Long Service Leave (Casual Wharf Clerks) Act 1978</i>

