



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 114 of 1972

An Act to amend the Long Service Leave Act, 1967-1971.

[Assented to 23rd November, 1972]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Long Service Leave Act Amendment Act, 1972". Short titles.

(2) The Long Service Leave Act, 1967-1971, as amended by this Act, may be cited as the "Long Service Leave Act, 1967-1972".

(3) The Long Service Leave Act, 1967-1971, is hereinafter referred to as "the principal Act".

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

3. Section 3 of the principal Act is amended—

(a) by striking out from the definition of "agreement" in subsection (1) the passage "filed in the office of the Industrial Registrar under the Industrial Code, 1920-1966, or" and inserting in lieu thereof the passage "as defined for the purposes of the Industrial Conciliation and Arbitration Act, 1972, or an industrial agreement filed";

Amendment of
principal Act,
s. 3—
Interpretation.

- (b) by striking out from that definition the passage "1904-1966" and inserting in lieu thereof the passage "1904, as from time to time amended,";
- (c) by striking out from subsection (1) the definition of "adult"; and
- (d) by striking out from subsection (1) the definition of "inspector" and inserting in lieu thereof the following definition:—

"inspector" means an Inspector as defined for the purposes of the Industrial Conciliation and Arbitration Act, 1972:.

Enactment of
s. 3a of
principal Act—

4. The following section is enacted and inserted in the principal Act immediately after section 3 thereof:—

Rights to long
service leave of
certain workers
not affected.

3a. Nothing in this Act shall be held to confer on a worker, whose service was terminated before the commencement of the Long Service Leave Act Amendment Act, 1972, any right to or in relation to long service leave, in respect of that service, that did not exist at the time at which that service was terminated.

Amendment of
principal Act,
s. 4—
Right to long
service leave.

5. Section 4 of the principal Act is amended—

- (a) by striking out from subsection (3) the passage "this Act", second occurring, and inserting in lieu thereof the passage "the Long Service Leave Act Amendment Act, 1972";
- (b) by striking out from subsection (3) the word "fifteen", first occurring, and inserting in lieu thereof the word "ten";
- (c) by striking out from paragraph (a) of subsection (3) the word "fifteen" and inserting in lieu thereof the word "ten";
- (d) by striking out from paragraph (b) of subsection (3) the word "fifteen" and inserting in lieu thereof the word "ten";
- (e) by striking out from paragraph (b) of subsection (3) the passage "eight-and-two-thirds" and inserting in lieu thereof the passage "thirteen";
- (f) by striking out from paragraph (c) of subsection (3) the word "fifteen", first occurring, and inserting in lieu thereof the word "ten";
- (g) by inserting in paragraph (c) of subsection (3) after the passage "in lieu of leave" the passage " , that had not been taken by him,";

- (h) by striking out from paragraph (c) the word "fifteen", second occurring, and inserting in lieu thereof the word "ten";
 - (i) by striking out from subsection (5) the passage "of which at least five years have been served as an adult,";
 - (j) by striking out from subsection (5) the word "fifteen", first occurring, and inserting in lieu thereof the word "ten";
- and
- (k) by striking out from subsection (5) the word "fifteen", second occurring, and inserting in lieu thereof the word "ten".

6. Section 5 of the principal Act is amended by striking out subsection (8) and inserting in lieu thereof the following subsection:—

Amendment of
principal Act,
s. 5—
What con-
stitutes service.

(8) In the case of a worker who commenced service with an employer before the first day of January, 1972 and, after the commencement of the Long Service Leave Act Amendment Act, 1972, completes a period of not less than ten years' service with the employer or whose service having commenced as aforesaid is terminated after the commencement of that Act and after the worker has completed at least seven years' service with the employer in a manner that would entitle the worker to payment in lieu of long service leave under subsection (5) of section 4 of this Act, the long service leave or payment in lieu thereof to which the worker is entitled shall be calculated on the following basis:—

- (a) that the worker is entitled to a period of leave that bears to thirteen weeks the same proportion as the period of service, if any, completed by the worker with the employer prior to the first day of January, 1966, calculated to the nearest complete week of service, bears to twenty years;
 - (b) that the worker is entitled, in addition, to a period of leave in respect of any period of service completed by the worker with the employer during the period commencing on and including the first day of January, 1966 and concluding on and including the first day of January, 1972, that bears to thirteen weeks the same proportion as that period of service, calculated to the nearest complete week of service, bears to fifteen years;
- and
- (c) that the worker is entitled, in addition, to a period of leave that bears to thirteen weeks the same proportion as the period of service completed by the worker

with the employer after the first day of January, 1972, calculated to the nearest complete week of service, bears to ten years.

Amendment of
principal Act,
s. 11—
Exemption.

7. Section 11 of the principal Act is amended—

- (a) by striking out from subsection (1) the word "The" being the first word in that subsection and inserting in lieu thereof the passage "Subject to this section the";
- (b) by striking out from subsection (1) the passage "the President or a Commissioner or the Industrial Registrar" and inserting in lieu thereof the passage "a Presidential Member or a Commissioner";
- (c) by striking out from paragraph (a) of subsection (2) the passage "this Act" and inserting in lieu thereof the passage "the Long Service Leave Act Amendment Act, 1972";

and

- (d) by inserting immediately after subsection (4) the following subsections:—

(5) An exemption made under this section before the commencement of the Long Service Leave Act Amendment Act, 1972, shall on the expiration of the period of six months next following that commencement cease to have any further force or effect, but nothing in this subsection shall affect the right of any person to make application under and in accordance with this section for an exemption after that commencement.

(6) The cessation of effect of an exemption pursuant to subsection (5) of this section shall not affect any right or obligation existing under any award, agreement or scheme applicable to a worker immediately before that cessation.

Repeal of
s. 12 of
principal Act
and enactment
of section in
its place—

Failure to
grant leave.

8. Section 12 of the principal Act is repealed and the following section is enacted and inserted in its place:—

12. (1) Subject to subsection (2) of this section, where the Industrial Court of South Australia is satisfied that a worker or a deceased worker had not been granted, or had not received payment in lieu of, the whole or any part of the long service leave to which he was entitled under this Act the court may, on the application of—

- (a) the worker;
- (b) in the case of a deceased worker, the personal representative of the deceased worker;
- or
- (c) a registered association within the meaning of the Industrial Conciliation and Arbitration Act, 1972, of which the worker is a member,

by order direct that the leave be granted or the payment made by the employer or former employer of the worker liable under this Act to grant the leave or make the payment, as the case may be.

(2) Where the service of the worker the subject of an application under subsection (1) of this section has terminated, the Industrial Court shall not have jurisdiction to hear and determine any such application that is made after the expiration of three years from the day of that termination.

(3) The Industrial Conciliation and Arbitration Act, 1972, shall *mutatis mutandis* apply and have effect as if an application under subsection (1) of this section were a claim under paragraph (d) of subsection (1) of section 15 of that Act.

(4) An application under section 12 of this Act as in force immediately before the commencement of the Long Service Leave Act Amendment Act, 1972, may be heard and determined by the Industrial Court in all respects as if this section were in force at the time that it was made and it were an application under this section.

9. Section 13 of the principal Act is amended—

- (a) by inserting in subsection (1) after the passage “or by any other person” the passage “, in substitution for the employment in relation to which his right to long service leave accrued”;

and

- (b) by striking out subsection (2) and inserting in lieu thereof the following subsection:—

(2) An employer shall not knowingly employ a worker for hire or reward in any employment in which, pursuant to subsection (1) of this section, the worker is prohibited from engaging.

Amendment of
principal Act,
s. 13—
Employment
during leave.

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

M. L. OLIPHANT, Governor