

## LONG SERVICE LEAVE (CASUAL WHARF CLERKS).

### No. 7 of 1966.

AN ACT to provide for the granting of long service leave to persons employed as casual wharf clerks and for matters incidental thereto.

[20 July 1966.]

**B**E 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:—

Short title and commencement.

**1**—(1) This Act may be cited as the *Long Service Leave (Casual Wharf Clerks) Act 1966*.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

**2**—(1) In this Act, unless the contrary intention appears—  
“casual wharf clerk” means a person who is employed and paid at a rate calculated by the hour in the performance of clerical duties consisting of or including—

- (a) reckoning the quantity and volume of goods loaded on, or unloaded from, ships;
- (b) receiving, delivering, sorting, or stacking goods loaded on, or unloaded from, ships;
- (c) entering in ships' manifests particulars of goods loaded on, or unloaded from, ships; or
- (d) time-keeping or other clerical work—
  - (i) in connection with the loading of goods on ships or the unloading of goods from ships;
  - (ii) in or in connection with wharf offices; or
  - (iii) in or on any part of a ship while it is berthed at a port in this State;

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

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

“Fund” means the Fund established pursuant to section four;

- “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;
- “long service leave” means long service leave under this Act;
- “long service leave charge” means the long service leave charge referred to in section five;
- “ordinary pay” has the meaning assigned to that expression by section three;
- “qualifying service” has the meaning assigned to that expression by section eight;
- “Secretary” means the Secretary for Labour;
- “ship” includes a barge, lighter, hulk, or other vessel;
- “wharf” includes a pier and jetty, and any shed adjacent to a wharf;
- “workers’ compensation” means compensation payable under the *Workers’ Compensation Act 1927* or a scheme in respect of which a certificate is in force under section twelve of that Act.

(2) For the purposes of this Act, the number of hours of the employment of a person by an employer during any period shall be deemed to be the number of complete hours within that period for which that person was paid or was entitled to be paid by that employer.

**3**—(1) For the purposes of this Act, the ordinary pay of an employee is a sum equivalent to the average weekly earnings of the employee in his employment as a casual wharf clerk during the period of twelve months ending on the day preceding the day on which any long service leave to which he is entitled under this Act is granted to him by his employer or on which a determination with respect to that long service leave is made pursuant to section eleven, whichever is the earlier day.

Meaning of “ordinary pay”.

(2) In computing the ordinary pay of an employee for the purposes of this Act, any sums received by the employee during the period referred to in subsection (1) of this section 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.

**4**—(1) There shall be established in the books of the Treasury a fund to be called the Casual Wharf Clerks Long Service Leave Fund. The Fund.

(2) There shall be paid into the Fund—

- (a) all long service leave charges paid or recovered under this Act; and

(b) any other sums that, under this Act, are required to be paid into the Fund.

(3) The Treasurer shall pay out of the Fund the sums that are required by this Act to be paid out of the Fund.

(4) The Treasurer may invest any moneys standing to the credit of the Fund in like manner as he may invest moneys standing to the credit of the Trust Fund established under the *Public Account Act 1957*.

(5) On the commencement of this Act, the Treasurer shall transfer from the Consolidated Revenue to the credit of the Fund the sum of eight thousand dollars.

(6) In addition to the sum mentioned in subsection (5) of this section, the Treasurer, on the recommendation of the Secretary, may, during the period of five years after the commencement of this Act, transfer from the Consolidated Revenue to the credit of the Fund such sums (not exceeding in the aggregate the sum of eight thousand dollars) as he may think fit.

(7) The Consolidated Revenue is, by force of this subsection, appropriated to such extent as may be necessary to give effect to the provisions of subsections (5) and (6) of this section.

(8) The Treasurer shall, within five years after the commencement of this Act or such further period as may be approved by the Treasurer on the recommendation of the Secretary and the Under-Treasurer, transfer from the Fund to the credit of the Consolidated Revenue the sums transferred to the credit of the Fund under the foregoing provisions of this section.

Long service  
leave charge.

**5**—(1) Each employer by whom an employee is employed shall, in accordance with this Act, pay a long service leave charge in respect of the employment by him of that employee.

(2) A long service leave charge in respect of the employment of an employee is the prescribed sum multiplied by the number of hours of that employment.

(3) Subject to this section, where a person becomes liable under this Act to pay a long service leave charge in respect of any employment he shall pay that charge within the time within which he is required by section six to furnish a return in respect of that employment.

(4) The Secretary may, in a case in which he considers it reasonable so to do, extend the time within which a long service leave charge is required to be paid or permit the charge to be paid by instalments of such amounts and at such times as he may determine.

(5) A long service leave charge that becomes due under this Act shall be deemed to be a debt due to the Crown and is payable, and shall be paid, to the Treasurer.

(6) In this section, "prescribed sum" means the sum of three and a third cents or such lesser sum as may, for the time being, be prescribed.

6—(1) An employer shall, within fourteen days after the end of each month, furnish to the Secretary a return, in the prescribed form or, if no form is prescribed, in such form as the Secretary may approve, of the hours of the employment of employees by him during each pay period ending in that month, together with such other particulars as may be specified in the form.

Returns in respect of employment of casual wharf clerks.

(2) An employer who fails to comply with the provisions of subsection (1) of this section is guilty of an offence.

Penalty: Forty dollars.

(3) Upon the conviction of a person of an offence under subsection (1) of this section in respect of any pay period, the police magistrate before whom he is convicted may order him to furnish to the Secretary such a return as is referred to in that subsection in respect of that period within such time as may be specified in the order.

(4) A person who fails to comply with an order made under subsection (3) of this section is guilty of an offence, and liable to a penalty of two hundred dollars, and to a further penalty of forty dollars for each day following the expiration of the period specified in the order until the return required to be furnished by the order is so furnished.

7—(1) A person who wilfully avoids or attempts to avoid the payment of a long service leave charge is guilty of an offence.

Avoidance of long service leave charge.

Penalty: Two hundred dollars.

(2) On convicting a person of an offence under this section the police magistrate before whom he is convicted may, in addition to or in lieu of imposing a penalty, order him to pay to the Treasurer such sum as the police magistrate may determine, not exceeding the amount of the long service leave charge of which the police magistrate considers he has avoided payment.

(3) A sum that is paid to, or recovered by, the Treasurer under an order made under subsection (2) of this section shall be paid by him into the Fund, and, to the extent of its amount, shall be deemed to discharge the liability of the person against whom the order was made to pay the long service leave charge for the avoidance of the payment of which he has been convicted.

(4) Subject to subsection (3) of this section, the conviction of a person for an offence under this section or the imposition or payment of a penalty under this section does not relieve the person from liability for the payment of any long service leave charge.

Qualifying  
service for  
long service  
leave.

8—(1) For the purposes of this Act, the 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.

(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, if the absence is certified as necessary by a legally-qualified medical practitioner;
- (c) an 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) an 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 or standing down of an employee, if he is re-employed as a casual wharf clerk within a period not exceeding two 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 as is referred to in sub-paragraph (ii) of this paragraph, 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 *Wages Boards Act 1920* as a member thereof or otherwise exercising his functions as a member of such a board; 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, an interruption or absence of a kind mentioned in paragraphs (a), (b), (c), (f), and (g) of subsection (2) of this section shall be counted as part of the period of his employment, but an interruption or absence of a kind

mentioned in paragraphs (d), (e), and (h) of that subsection shall not be counted as part of the period of his employment.

(4) For the purposes of this section, where a person serves or has served as a member of the naval, military, or air forces of the Commonwealth (otherwise than as a member of the permanent force) for any period and was, before the commencement of that period, employed as a casual wharf clerk he shall, if, after the expiration of that period, he again becomes employed as a casual wharf clerk, be deemed throughout that period to have been employed as a casual wharf clerk.

(5) For the purposes of this section, where a person who is an employee at the commencement of this Act was before the commencement of this Act employed at any port or ports in this State as a waterside worker, the total period of his employment as a waterside worker shall be deemed to be a period of employment as a casual wharf clerk.

(6) For the purposes of this section, where a person who is an employee at the commencement of this Act was before the commencement of this Act employed at any port or ports in this State in any duties referred to in the definition of "casual wharf clerk" in subsection (1) of section two and was paid at a rate calculated by the week or any longer period, the total period of his employment while so paid shall be deemed to be a period of employment as a casual wharf clerk.

(7) Where an employee attains or has attained the age of seventy years, so much of his qualifying service as occurs after he attains the age of seventy years (other than any part of that service that occurs before the expiration of a period of ten years after the commencement of this Act) shall be disregarded for the purpose of determining the length of that qualifying service.

(8) In this section—

"Commonwealth Act" means the *Stevedoring Industry Act 1956-1965* of the Commonwealth, and includes that Act as amended from time to time and any Commonwealth Act passed in substitution therefor;

"waterside worker" means a person who is a waterside worker within the meaning of the Commonwealth Act.

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

(2) Subject to subsections (4) and (5) of this section, the period of long service leave to which an employee is entitled under this Act is—

(a) on the completion by the employee of at least fifteen years of any qualifying service—

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

- (ii) eight and two-third weeks' long service leave in respect of each additional ten years of the qualifying service; and
  - (iii) on the termination of his employment, 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 under the foregoing provisions of this paragraph) comprising such period of long service leave as bears the same proportion to thirteen weeks as that number of years bears to fifteen years; or
- (b) in the case of an employee who has not completed fifteen years of any qualifying service but has completed at least ten 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, where the Secretary 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 bears the same proportion to thirteen weeks as the total period of the employee's qualifying service bears to fifteen years.

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

(4) In the case of an employee whose qualifying service began before the seventeenth day of December 1964 and whose period of qualifying service would entitle 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, namely:—

- (a) A period calculated on the basis of thirteen weeks for twenty years' continuous employment before that date; and
- (b) A period calculated on the basis of thirteen weeks for fifteen years' continuous employment on and after that date.

(5) Notwithstanding any other provision of this Act—

- (a) where a person who is an employee at the commencement of this Act was before the commencement of this Act employed in a permanent

capacity by any one employer, any long service leave (or payment in lieu thereof) granted to the employee in respect of his employment in that capacity pursuant to the *Long Service Leave Act 1956* shall be taken into account in computing the employee's entitlement to long service leave under this Act, and shall be deemed to have been leave taken or a payment received under this Act; and

- (b) the period of long service leave to which an employee is entitled under this Act in respect of any period of qualifying service occurring before the commencement of this Act is a period of thirteen weeks and no more, irrespective of the length of that qualifying service.

(6) For the purposes of subsection (2) of this section, the expression "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.

**10**—(1) If an employee who is entitled to long service leave under this Act dies before or while taking that leave, the Treasurer shall pay out of the Fund to the employee's personal representative a sum equal to the amount of ordinary pay that would have been payable to the employee in respect of the period of long service leave not taken by the employee, 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 fifteen years of any qualifying service dies while still an employee, the Treasurer shall pay out of the Fund to the employee's personal representative, in respect of any period of that qualifying service that is after the last accrual of entitlement to long service leave under subsection (2) of section nine, a sum equal to the amount of the employee's ordinary pay for a period equalling one-sixtieth of the first-mentioned period.

(3) Where an employee who has completed at least ten years of any qualifying service but less than fifteen years of any qualifying service dies while still an employee, the Treasurer shall pay out of the Fund 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.

**11**—(1) Where an employee becomes entitled to a period of long service leave the Secretary shall, on his application, 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 Secretary shall have regard to the labour requirements of the port at which the applicant for the determination is normally employed, but, subject thereto, shall endeavour to secure 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 he may agree.

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

Payments in respect of long service leave.

**12**—(1) Where the period within which an employee may take any long service leave has been determined under this Act he shall, subject to this section, be paid out of the Fund his ordinary pay for that period.

(2) Except as may otherwise be agreed between the Secretary and the employee any sum due to him under subsection (1) of this section in respect of a period of long service leave 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 a person terminates (otherwise than by reason of his death) as a result of his ceasing to be an employee, he shall be paid out of the Fund 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 out of the Fund in respect of that long service leave.

(4) Where the qualifying service of a person terminates by reason of his death and immediately before his death he was an employee, his legal personal representative shall be paid from the Fund 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 from the Fund in respect of that leave.

Determination of entitlement to long service leave, &c.

**13**—(1) The Secretary may, on the application of a person who is or was at any time an employee, or of the legal personal representative of such a person, or where it is necessary so to do for the purposes of this Act, determine—

- (a) whether that person is or was entitled to any long service leave under this Act;
- (b) the length of any qualifying service completed by him at any date; and
- (c) the length of any long service leave to which he is or was entitled under this Act.

(2) The Secretary shall notify any determination made by him under this section to such persons as may be prescribed.

**14**—(1) A person who is aggrieved by—

Appeals.

- (a) the refusal of the Secretary to grant a certificate for the purposes of sub-paragraph (ii) of paragraph (b) of subsection (2) of section nine; or
- (b) a determination of the Secretary under section eleven or section thirteen,

may appeal to a police magistrate.

(2) On hearing an appeal under this section, the police magistrate, unless he dismisses the appeal, may—

- (a) in respect of an appeal under paragraph (a) of subsection (1) of this section, issue such a certificate as the Secretary could have granted; and
- (b) in respect of an appeal under paragraph (b) of subsection (1) of this section, vary the determination made by the Secretary,

and a certificate granted by a police magistrate under this section has the like effect as a certificate granted by the Secretary, and any determination made by the Secretary has effect as varied under this section.

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

(4) A police magistrate may upon the hearing of an appeal under this section award costs to any party to the appeal and may assess the amount of those costs.

**15** 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.

**16** 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.

Contracting out prohibited.

**17**—(1) No person shall—

Offences.

- (a) for the purpose of obtaining any long service leave under this Act for himself or any other person or of obtaining payment of any sum under this Act (whether for himself or for some other person) make any representation that he knows to be false or misleading or does not believe to be true; or
- (b) contravene or fail to comply with any provision of this Act that is applicable to him.

Penalty: Two hundred dollars.

(2) Proceedings in respect of offences against this Act shall be heard and determined by a police magistrate sitting alone.

Time within which proceedings may be taken.

**18** Notwithstanding anything in the *Justices Act 1959*, proceedings in respect of offences against this Act may be commenced at any time within one year after the cause of complaint arose.

Regulations.

**19**—(1) The Governor may make regulations—

- (a) regulating or prescribing the manner in which determinations may, or are to be, made under section eleven or section thirteen;
- (b) regulating the bringing and hearing of appeals under section fourteen; and
- (c) prescribing any matter or thing which is authorized or required to be prescribed for the purposes of this Act.

(2) The regulations may impose penalties, not exceeding forty dollars, for offences against the regulations.

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## PLANT DISEASES.

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### No. 8 of 1966.

AN ACT to amend the *Plant Diseases Act 1930*.

[20 July 1966.]

**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:—

Short title, citation, and commencement.

**1**—(1) This Act may be cited as the *Plant Diseases Act 1966*.

(2) The *Plant Diseases Act 1930*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

**2** Section two of the Principal Act is amended—

- (a) by omitting the definition of “bacterium”;
- (b) by omitting the definition of “disease” and substituting therefor the following definition:—

“ ‘disease’ means any disease affecting plants, and any condition of, or injury to, a plant caused by a noxious organism;”