



Western Australia

# **Long Service Leave Act 1958**



# Long Service Leave Act 1958

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# **Long Service Leave Act 1958**

**An Act to provide for the granting of long service leave to certain Western Australian employees and for matters incidental thereto.**

*[Long title amended: No. 79 of 1995 s. 45; No. 36 of 2006 s. 54.]*

## **Part I — Preliminary provisions**

**1. Short title**

This Act may be cited as the *Long Service Leave Act 1958*.

**2. Commencement**

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

[3. *Deleted: No. 44 of 1991 s. 10.*]



## Part II — Construction and application of this Act

### Division 1 — General

*[Heading inserted: No. 30 of 2021 s. 82.]*

#### 4. Terms used

(1) In this Act unless the context requires otherwise —

**apprentice** means a person who is an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

**award** means an award in force under the IR Act;

**business** includes any trade, process, profession, or occupation, and any part of it;

**continuous employment** has the meaning given in section 6;

**employee** —

(a) means —

(i) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or

(ii) a person whose usual status is that of an employee;

and

(b) includes a casual or seasonal employee;

**employer** includes any of the following employing 1 or more employees —

(a) a person or public authority as defined in the IR Act;

(b) except as provided in the *Foreign States Immunities Act 1985* (Commonwealth) section 12, a foreign state or consulate;

(c) a related body corporate of the employer if the employer is itself a body corporate;

***employer-employee agreement*** has the meaning given in the IR Act section 7(1);

***industrial agreement*** means an industrial agreement in force under the IR Act;

***industrial inspector*** has the meaning given in the IR Act section 7(1);

***industrial magistrate's court*** has the meaning given by the IR Act;

***IR Act*** means the *Industrial Relations Act 1979*;

***MCE Act*** means the *Minimum Conditions of Employment Act 1993*;

***ordinary pay*** has the meaning given in Division 2;

***related body corporate***, of an employer that is a body corporate, has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

[(2), (3) deleted]

[Section 4 amended: No. 37 of 1964 s. 2; No. 113 of 1965 s. 8; No. 97 of 1973 s. 3; No. 44 of 1991 s. 11; No. 79 of 1995 s. 46; No. 20 of 2002 s. 20; Gazette 15 Aug 2003 p. 3687; No. 36 of 2006 s. 55; No. 44 of 2008 s. 54; No. 30 of 2021 s. 83 and 98.]

#### **4A. Employees with equivalent separate LSL entitlements**

(1) In this section —

***award, agreement or enactment*** means —

- (a) an award or industrial agreement; or
- (b) an agreement between an employer and employee (including an employer-employee agreement); or
- (c) an enactment of the State, the Commonwealth, another State or a Territory;

***entitlement***, in relation to long service leave or payment on termination instead of long service leave, includes an eligibility

to become entitled to the long service leave or payment on termination instead of long service leave;

**WA LSL** means long service leave, or payment on termination instead of long service leave, under Part III.

- (2) For the purposes of this section, a **separate LSL entitlement** is an entitlement to long service leave, and a payment on termination instead of long service leave, under an award, agreement or enactment.
- (3) For the purposes of this section, a payment (whether in the form of a loading, other additional incremental payment or otherwise) instead of an entitlement under subsection (2) is not a **separate LSL entitlement**.
- (4) This Act does not apply to an employee who has a separate LSL entitlement to take long service leave and to be paid on termination instead of long service leave that is at least equivalent to the entitlement to WA LSL to take long service leave and to be paid on termination instead of long service leave.
- (5) Subsection (6) applies to an employee —
  - (a) who becomes entitled to WA LSL in relation to employment with an employer; and
  - (b) who, immediately before becoming entitled to WA LSL, had a separate LSL entitlement in relation to employment with the employer.
- (6) Any long service leave taken by, or payment on termination instead of long service leave made to, the employee under the separate LSL entitlement must be taken into account in the calculation of the employee's entitlement to WA LSL as if it were taken, or paid on termination, as WA LSL.

*[Section 4A inserted: No. 30 of 2021 s. 84.]*

**5. Cashing out of accrued long service leave**

- (1) An employer and an employee may agree that the employee may forgo the employee's entitlement, or part of the employee's entitlement, to long service leave under section 8(2)(a) or (b) if —
- (a) the employee is given an adequate benefit instead of the entitlement; and
  - (b) the agreement is in writing, signed by the employer and employee.
- (2) For the purposes of subsection (1), a benefit is not adequate unless the employee is paid at least the amount of ordinary pay the employee would have received had the employee taken the long service leave or part of the leave.
- (3) Nothing in this section enables the employer and employee to reach the agreement before the employee's entitlement to long service leave has accrued.

*[Section 5 inserted: No. 30 of 2021 s. 84.]*

**6. Continuous employment**

- (1) An employee's *continuous employment* with an employer includes an absence from work by the employee comprising any of the following, whether paid or unpaid and irrespective of the duration —
- (a) annual leave;
  - (b) leave for illness or injury, or carer's leave;
  - (c) long service leave;
  - (d) parental leave;
  - (e) compassionate leave;
  - (f) bereavement leave;
  - (g) family and domestic violence leave;

- (h) public holidays;
  - (i) any other form of leave provided as part of the employee's employment.
- (2) An employee's ***continuous employment*** with an employer also includes any of the following absences from work, whether paid or unpaid and irrespective of the duration —
- (a) a period following the termination of the employee's employment by the employer if the termination has been made with the intention of avoiding —
    - (i) obligations under this Act in respect of long service leave; or
    - (ii) obligations in respect of annual leave under an award, industrial agreement, employer-employee agreement, order of the Commission, the MCE Act or any other enactment;
  - (b) if the employee resumes employment with the employer as soon as practicable after the absence — a period during which the employment is interrupted by service as a member of the naval, military or air forces of the Commonwealth other than as a member of the Permanent Forces of the Commonwealth of Australia.
- (3) An employee has ***continuous employment*** with an employer despite an absence from work comprising any of the following, whether paid or unpaid and irrespective of the duration —
- (a) an absence other than that referred to in subsection (1) or (2) which is authorised by the employer;
  - (b) a standing-down of the employee in accordance with the provisions of —
    - (i) an award, agreement, order or determination in force under the IR Act; or
    - (ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or

- (iii) any other enactment;
  - (c) an absence arising directly or indirectly from an industrial dispute if the employee returns to work in accordance with the terms of settlement of the dispute;
  - (d) a reasonable absence from work on legitimate union business in respect of which the employee has requested and been refused leave;
  - (e) an absence for a reason not specified in subsection (1) or (2) or in this subsection unless the employer gives, during or within 14 days after the absence, written notice to the employee that the continuity of the employment has been broken by the absence.
- (4) An employee has ***continuous employment*** with an employer despite a termination of the employment by the employer —
  - (a) on any ground other than slackness of trade — if the employee is re-employed by the employer within a period not exceeding 2 months from the date of the termination;
  - (b) on the ground of slackness of trade — if the employee is re-employed by the employer within a period not exceeding 6 months from the date of the termination.
- (5) A casual or seasonal employee has ***continuous employment*** with an employer despite an absence from work comprising any of the following, irrespective of the duration —
  - (a) an absence under the terms of the employment;
  - (b) an absence caused by seasonal factors;
  - (c) any other absence after which the employee has, due to the regular and systematic nature of the employment, a reasonable expectation of returning to work for the employer.

- (6) In addition, a casual or seasonal employee has *continuous employment* with an employer despite the fact that the employee —
- (a) is employed by the employer under 2 or more contracts of employment; or
  - (b) is also employed by another person during the period of employment with the employer.
- (7) If an employee enters into a contract of employment with an employer within 52 weeks after completing an apprenticeship with the employer, the period of apprenticeship is taken to be a part of the employee's *continuous employment* with the employer.

*[Section 6 inserted: No. 30 of 2021 s. 84.]*

**6A. Calculating length of continuous employment**

- (1) When calculating the length of continuous employment for the purposes of this Act, a period is counted if it is any of the following —
- (a) leave referred to in section 6(1) for which the employee has received payment;
  - (b) an absence referred to in section 6(2);
  - (c) an absence referred to in section 6(5).
- (2) When calculating the length of continuous employment for the purposes of this Act, a period is not counted if it is any of the following —
- (a) leave referred to in section 6(1) for which the employee has not received payment;
  - (b) an absence referred to in section 6(3);
  - (c) a period between a termination and re-employment referred to in section 6(4);

- (d) in respect of an employee to whom section 6(7) applies, any period between —
  - (i) the completion of the employee’s apprenticeship; and
  - (ii) the employment of the employee by the employer;
- (e) a period during the transfer of business as defined in section 7D where —
  - (i) the employment of an employee of the old employer as defined in section 7D has terminated; and
  - (ii) the employee has not yet been employed by the new employer as defined in section 7D.

*[Section 6A inserted: No. 30 of 2021 s. 84.]*

**Division 2 — Ordinary pay**

*[Heading inserted: No. 30 of 2021 s. 85.]*

**7. Ordinary pay: general**

- (1) Except as provided in subsection (4), an employee’s **ordinary pay** is the employee’s remuneration for the employee’s normal weekly number of hours of work calculated on the ordinary time rate of pay applicable to the employee as at the time when any period of long service leave granted to the employee under this Act commences, or is taken to commence.
- (2) For the purposes of subsection (1), the normal weekly number of hours of work of an employee whose hours have varied during a period of employment is the average weekly hours worked by the employee during the period, calculated by reference to ascertainable hours worked by the employee during the period, excluding any period referred to in section 6A(2).
- (3) For the purposes of subsection (1), the rate of pay of an employee whose leave, or any portion of it, is postponed to meet



the convenience of the employee by agreement between the employer and employee is the rate of pay applicable to the employee —

- (a) on the day on which the leave accrues; or
  - (b) if the employer and employee agree — on the day on which the employee commences the leave.
- (4) The **ordinary pay** of an employee employed on piecework, commission, bonus work, percentage reward, or any other system of payment, wholly or partly by results, is the employee's average weekly rate of pay earned over a period totalling 365 days ending on —
- (a) if the employee is in employment and —
    - (i) takes long service leave — the day immediately before the day on which the employee commences the long service leave; or
    - (ii) takes payment instead of long service leave under section 5 — the day immediately before the day on which an agreement under section 5 is reached in relation to the payment;
- or
- (b) if the employee is not in employment — the day immediately before the day on which the employee was last in employment; or
  - (c) if the employee is dead — the day immediately before the day on which the employee died.
- (5) For the purposes of subsection (4), the following periods must be disregarded —
- (a) any period of unpaid leave;
  - (b) any period during which there is a standing-down of the employee in accordance with the provisions of —
    - (i) an award, agreement, order or determination in force under the IR Act; or

- (ii) the *Fair Work Act 2009* (Commonwealth) or an enterprise agreement under that Act; or
- (iii) any other enactment.

[Section 7 inserted: No. 30 of 2021 s. 86.]

**7A. Ordinary pay: shift premiums, overtime, penalty rates or allowances**

Except as provided in section 7B, an employee's *ordinary pay* does not include shift premiums, overtime, penalty rates, allowances or any similar payments.

[Section 7A inserted: No. 30 of 2021 s. 86.]

**7B. Ordinary pay: casual employees' loading**

A casual employee's *ordinary pay* includes any casual loading payable under any of the following —

- (a) an award, industrial agreement, employer-employee agreement or order of the Commission;
- (b) a modern award, enterprise agreement or national minimum wage order made by the Fair Work Commission under the *Fair Work Act 2009* (Commonwealth);
- (c) a contract of employment;
- (d) an enactment.

[Section 7B inserted: No. 30 of 2021 s. 86.]

**7C. Ordinary pay: board and lodging**

- (1) An employee's *ordinary pay* includes the cash value of board and lodging during a period of long service leave if the board and lodging —
  - (a) is provided to the employee by the employer; but
  - (b) is not provided to, and taken by, the employee during the period of long service leave.

- (2) For the purposes of subsection (1), the cash value of board and lodging provided to an employee is —
- (a) if the value is fixed by or under the conditions of the employee's employment — that value; or
  - (b) if the value is not fixed by or under the conditions of the employee's employment — a value calculated by reference to a rate prescribed in the regulations.

*[Section 7C inserted: No. 30 of 2021 s. 86.]*

### **Division 3 — Transfer of business**

*[Heading inserted: No. 30 of 2021 s. 87.]*

#### **7D. Terms used**

In this Division —

*connection between the old employer and the new employer* has the meaning given in section 7G;

*new employer* has the meaning given in section 7E;

*old employer* has the meaning given in section 7E;

*transfer of business* has the meaning given in section 7E;

*transferring employee* has the meaning given in section 7F;

*transferring work* has the meaning given in section 7E.

*[Section 7D inserted: No. 30 of 2021 s. 87.]*

#### **7E. Transfer of business, old employer, new employer, transferring work**

There is a *transfer of business* from an employer (the *old employer*) to another employer (the *new employer*) if the following requirements are satisfied —

- (a) the employment of an employee of the old employer has terminated;

- (b) within 3 months after the termination, the employee becomes employed by the new employer;
- (c) the work (the *transferring work*) the employee performs for the new employer is the same, or substantially the same, as the work the employee performed for the old employer;
- (d) there is a connection between the old employer and the new employer.

[Section 7E inserted: No. 30 of 2021 s. 87.]

**7F. Transferring employee**

An employee in relation to whom the requirements in section 7E(a), (b) and (c) are satisfied is a *transferring employee*.

[Section 7F inserted: No. 30 of 2021 s. 87.]

**7G. Connection between old employer and new employer**

- (1) There is a *connection between the old employer and the new employer* if, in accordance with an arrangement between them, the new employer owns or has the beneficial use of some or all of the assets (whether tangible or intangible) that —
  - (a) the old employer owned or had the beneficial use of; and
  - (b) relate to, or are used in connection with, the transferring work.
- (2) There is a *connection between the old employer and the new employer* if, because the old employer has outsourced the transferring work to the new employer, the transferring work is performed by 1 or more transferring employees as employees of the new employer.
- (3) There is a *connection between the old employer and the new employer* if —
  - (a) because the new employer had outsourced the transferring work to the old employer, the transferring

- work had been performed by 1 or more transferring employees, as employees of the old employer; and
- (b) because the new employer has ceased to outsource the work to the old employer, the transferring work is performed by those transferring employees, as employees of the new employer.
- (4) There is a ***connection between the old employer and the new employer*** if the new employer is a related body corporate of the old employer when the transferring employee becomes employed by the new employer.

*[Section 7G inserted: No. 30 of 2021 s. 87.]*

**7H. Status of transferring employees on transfer of business**

For the purposes of this Act, on a transfer of business —

- (a) a transferring employee's employment before and after the transfer is taken to be a single period of continuous employment; and
- (b) the new employer is taken to have been the transferring employee's sole employer for the entire period.

*[Section 7H inserted: No. 30 of 2021 s. 87.]*

**7I. Transfer of employment records**

- (1) In this section —  
***employment records*** means employment records required to be kept by an employer under section 26(1).
- (2) On the transfer of a business, the old employer must transfer copies of all transferring employees' employment records to the new employer.
- (3) A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

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- (4) In proceedings under the IR Act section 83E for a contravention of subsection (2), an industrial magistrate's court may, as an alternative, determine that a contravention of section 26(1) or (2) has occurred.

*[Section 7I inserted: No. 30 of 2021 s. 87.]*

**Part III — Entitlements to long service leave or to  
payment on termination instead**

*[Heading amended: No. 30 of 2021 s. 88.]*

**8. Long service leave**

- (1) An employee is entitled in accordance with, and subject to, the provisions of this Act, to long service leave on ordinary pay in respect of the length of continuous employment calculated under section 6A with the same employer.
- (2) An employee who has completed at least 10 years of continuous employment is entitled to an amount of long service leave as follows —
  - (a) in respect of 10 years so completed, 8 <sup>2</sup>/<sub>3</sub> weeks;
  - (b) in respect of each 5 years' continuous employment so completed after such 10 years, 4 <sup>1</sup>/<sub>3</sub> weeks; and
  - (c) on the termination of the employee's employment —
    - (i) by the employee's death;
    - (ii) in any circumstances otherwise than by the employer for serious misconduct,in respect of the number of years of such continuous employment completed since the employee last became entitled under this Act to an amount of long service leave, a proportionate amount on the basis of 8 <sup>2</sup>/<sub>3</sub> weeks for 10 years of such continuous employment.
- (3) Where an employee has completed at least 7 years but less than 10 years of continuous employment, and the employment is terminated —
  - (a) by the employee's death; or

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- (b) in any circumstances other than by the employer for serious misconduct,  
the amount of leave to which the employee is entitled is a proportionate amount on the basis of  $8\frac{2}{3}$  weeks for 10 years of such continuous employment.
- (4) If an employee has completed at least 9 but less than 15 years continuous employment prior to the commencement day, then, despite subsection (2)(a), the employee cannot take long service leave under subsection (2)(a) until after —
- (a) if the employee has completed at least 14 years continuous employment prior to the commencement day — completing 15 years continuous employment; or
- (b) in any other case — 12 months after the commencement day.
- (5) Subsection (4) does not apply if the employee and employer agree to that effect in writing.
- (6) Subsection (4) does not apply in respect of a period of continuous employment prior to the commencement day in respect of which the employee has become entitled to take long service leave.
- (7) An employee who becomes entitled to take long service leave under subsection (2)(a) in accordance with subsection (4) or (5) also becomes entitled to take long service leave under subsection (2)(b), in respect of the period of continuous employment that exceeds 10 years, pro rata.
- (8) Subsection (7) does not apply to an employee if, before being granted the long service leave, the employee completes 15 years continuous employment.
- (9) If an employee takes long service leave in accordance with subsection (7), the employee is entitled, after completing 15 years continuous employment, to take the remainder of the employee's entitlement under subsection (2)(b) not already taken in accordance with subsection (7).



- (10) In subsections (4) and (6) —  
**commencement day** means the day on which the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2 came into operation.

*[Section 8 inserted: No. 37 of 1964 s. 5; amended: No. 79 of 1995 s. 49; No. 36 of 2006 s. 56; No. 30 of 2021 s. 89 and 96-98.]*

*[8A. Deleted: No. 36 of 2006 s. 57.]*

**9. Taking long service leave and payment on termination**

- (1) Where an employee becomes entitled to a period of long service leave under this Act the leave is to be granted and taken —
- (a) except as provided in subsection (1AA), as soon as reasonably practicable after it becomes due; and
  - (b) in one continuous period, or if the employer and the employee so agree, in separate periods.
- (1AA) The employee and employer may agree when the employee will take long service leave.
- (1a) Where an employer and employee have not agreed when the employee is to take the employee's long service leave, subject to subsection (1b), the employer is not to refuse the employee taking, at any time suitable to the employee, any period of long service leave to which the employee became entitled more than 12 months before that time.
- (1b) The employee is to give to the employer at least 2 weeks' notice of the period during which the employee intends to take the long service leave.
- (1C) The employee may request the employer to grant the employee a period of long service leave —
- (a) twice as long as the period to which the employee would otherwise be entitled; and

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- (b) at a rate of pay equal to half the employee's ordinary pay.
- (1D) The employee may request the employer to grant the employee a period of long service leave —
  - (a) half as long as the period to which the employee would otherwise be entitled; and
  - (b) at a rate of pay equal to twice the employee's ordinary pay.
- (2) An employee whose employment is terminated is taken to have commenced long service leave on the day of termination if —
  - (a) the employee is entitled to long service leave under section 8(2) or (3); and
  - (b) the employment is terminated before the employee has taken all the long service leave to which the employee is entitled.
- (2A) On the day the employee commences long service leave under subsection (2), the employer must pay the full amount to which the employee is entitled in respect of the leave to —
  - (a) the employee; or
  - (b) if the employee has died — on request, to the employee's personal representative.
- (3) An employee is to be paid for a period of accrued long service leave at the time payment is made in the normal course of the employment, unless —
  - (a) the employee requests in writing to be paid before the period of leave commences, in which case the employee is to be so paid; or
  - (b) the employee and employer agree to another method of payment.

- (4) If —
- (a) a public holiday occurs during a period of long service leave taken by an employee under section 8(2)(a) or (b); and
  - (b) the employee is otherwise entitled to that holiday under the employee's conditions of employment,

the period of long service leave is increased by one day for each such public holiday.

*[Section 9 amended: No. 37 of 1964 s. 6; No. 79 of 1995 s. 51; No. 36 of 2006 s. 58; No. 30 of 2021 s. 90.]*

**10. Taking leave in advance**

- (1) Any employer may by agreement with an employee allow leave to such an employee before the right has accrued due, but where leave is taken in such a case the employee is not entitled to any further leave in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.
- (2) Where leave has been granted to an employee pursuant to subsection (1) before the right has accrued due, and the employment to which the leave relates subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted long service leave to which the employee was not at the date of termination of the employment or before entitled.

*[Section 10 amended: No. 37 of 1964 s. 7; No. 30 of 2021 s. 96-98.]*

## **Part IV — Enforcement of the provisions of the Act**

*[Heading inserted: No. 79 of 1995 s. 52.]*

### **11. Industrial magistrate's courts**

- (1) An industrial magistrate's court has jurisdiction to hear and determine all questions and disputes in relation to rights and liabilities under this Act, including without limiting the generality of this subsection, questions and disputes —
  - (a) as to whether a person is or is not an employee, or an employer, to whom this Act applies;
  - (b) whether and when and to what extent an employee is or has become entitled to long service leave, or payment on termination instead of long service leave;
  - (c) as to the ordinary pay of an employee;
  - (d) as to whether the employment of the employee was or was not ended by an employer with the intention of avoiding or attempting to avoid liability for long service leave; and
  - (e) with respect to a benefit instead of long service leave under an agreement made under section 5.
- (2) Jurisdiction granted under subsection (1) is exclusive of any other court except where an appeal lies to that other court.
- (3) Jurisdiction granted under subsection (1) is in addition to jurisdiction an industrial magistrate's court has —
  - (a) under the IR Act section 83(1)(e) to enforce a provision of Part III as an entitlement provision as defined in the IR Act section 7(1); and
  - (b) under the IR Act section 83E to enforce a provision of this Act that is a civil penalty provision as defined in the IR Act section 7(1).

*[Section 11 inserted: No. 79 of 1995 s. 52; amended: No. 30 of 2021 s. 91 and 98.]*

**12. Industrial inspectors may institute proceedings**

An industrial inspector may institute proceedings under section 11 in the inspector's own name, whether or not an employee is to be a party to the proceedings.

*[Section 12 inserted: No. 36 of 2006 s. 59; amended: No. 30 of 2021 s. 97.]*

*[13-17. Deleted: No. 79 of 1995 s. 52.]*

*[Part V (s. 18-19) deleted: No. 79 of 1995 s. 52.]*

*[Part VI: s. 23 deleted: No. 37 of 1964 s. 14;  
s. 20-22, 24 deleted: No. 79 of 1995 s. 52.]*

## **Part VII — Miscellaneous provisions**

*[Division 1 (s. 25) deleted: No. 79 of 1995 s. 53.]*

### **Division 2 — Records of employment**

#### **26. Keeping of employment records**

- (1) An employer must ensure that the following employment records are kept —
  - (a) each employee's name and, if the employee is under 21 years of age, the employee's date of birth;
  - (aa) the employer's name and Australian Business Number (if any);
  - (ab) the date of any transfer of business as defined in section 7D during the employment of the employee;
  - (b) the date on which the employee commenced employment with the employer;
  - (ba) the weekly hours worked by the employee;
  - (c) the gross and net amounts paid to the employee under the contract of employment, and all deductions and the reasons for them;
  - (d) all leave taken by the employee, whether paid, partly paid or unpaid;
  - (e) any agreement made under section 5, including details of —
    - (i) the benefit for, and the amount of, long service leave that was foregone; and
    - (ii) when the benefit was paid;
  - (f) such other details as are necessary for the calculation of the entitlement to, and payment for, long service leave under this Act;
  - (g) other matters prescribed by the regulations.

- (2) The employer must ensure that —
- (a) the employment records are kept in accordance with the regulations; and
  - (b) each employment record is retained during the employment of the employee and for not less than 7 years after that.
- (3) A contravention of subsection (1) or (2) is not an offence but those subsections are civil penalty provisions for the purposes of the IR Act section 83E.

*[(4) deleted]*

*[Section 26 inserted: No. 79 of 1995 s. 54; amended: No. 36 of 2006 s. 60; No. 30 of 2021 s. 92 and 98.]*

**26A. Access to employment records kept by employer**

- (1) An employer, on request in writing by a relevant person, must —
- (a) produce to the person the employment records under section 26 relating to an employee to whom that section applies; and
  - (b) let the person inspect the employment records.
- (1a) A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

*[(1b) deleted]*

- (2) Relevant persons are —
- (a) the employee or a person authorised in writing by the employee; and
  - (b) an industrial inspector.
- (3) The duty placed on an employer by subsection (1) —
- (a) continues so long as the employment record is required to be kept under section 26(2)(b);

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- (b) is not affected by the fact that the employee is no longer employed by the employer;
  - (c) includes the further duties —
    - (i) to let the relevant person enter premises of the employer for the purposes of inspection of the employment records; and
    - (ii) to let the relevant person take copies of, or extracts from, the employment records;
- and
- (d) must be complied with not later than the end of the next pay period after the request for inspection is received.

*[Section 26A inserted: No. 79 of 1995 s. 54; amended: No. 36 of 2006 s. 61; No. 30 of 2021 s. 93.]*

**Division 3 — Prohibition of employment during long service leave**

**27. Prohibition of employment during long service leave**

- (1) An employee must not, during any period when the employee is on long service leave, engage in any employment for reward in substitution for the employment from which the employee is on leave.
- (2) If an employee, during any period when the employee is on long service leave, engages in any employment for reward in substitution for the employment from which the employee is on leave the employee forfeits the right to leave in respect of the unexpired period of leave upon which the employee has entered, and the employer is entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.



- (3) The provisions of this section do not apply to an employee who, pursuant to section 9(2), is taken to commence a period of leave on the day of the termination of employment.

*[Section 27 amended: No. 30 of 2021 s. 96-98.]*

*[Division 4 (s. 28-31) deleted: No. 79 of 1995 s. 55.]*

*[Division 5: s. 32-34 deleted: No. 79 of 1995 s. 56;  
s. 35 and 36 deleted: No. 36 of 2006 s. 62.]*

### **Division 6 — Representation of parties in proceedings under this Act**

#### **37. Representation of parties in proceedings under this Act**

Any person who is a party to proceedings under this Act, may appear in person or be represented by a legal practitioner or by the person's agent duly appointed for that purpose.

*[Section 37 amended: No. 79 of 1995 s. 58; No. 65 of 2003 s. 50; No. 21 of 2008 s. 676; No. 9 of 2022 s. 424.]*

### **Division 7 — Regulations**

#### **38. Regulation making power**

- (1) The Governor may make regulations prescribing such matters as are contemplated, required, or permitted, to be prescribed by this Act, and such matters as appear to be necessary, desirable, or convenient, for giving effect to the purposes and objects of this Act.
- (2) Without limiting the generality of the power conferred by subsection (1), the Governor may make regulations prescribing as penalties for breaches of regulations so made penalties not exceeding in amount the sum of \$1 000.

*[Section 38 amended: No. 113 of 1965 s. 8; No. 79 of 1995 s. 59; No. 30 of 2021 s. 97.]*

**39. Application to this Act of certain regulations made under the IR Act**

To the extent to which the provisions of the regulations made under the IR Act are capable of application under this Act, those provisions apply accordingly; but to the extent that other regulations in addition to, substitution for, or amendment of, those regulations are necessary or desirable for the purposes of this Act, then to that extent other regulations may be made under this Act or under that Act, and such of the forms prescribed by the regulations made under that Act as are capable of use with adaptations for the purposes of this Act, may with such adaptations as are necessary, be used for the purposes of this Act.

*[Section 39 amended: No. 79 of 1995 s. 60; No. 30 of 2021 s. 94, 96 and 98.]*

## **Part 8 — Savings provisions for *Industrial Relations Legislation Amendment Act 2021***

*[Heading inserted: No. 30 of 2021 s. 95.]*

### **40. Terms used**

In this Part —

***commencement day*** means the day on which the *Industrial Relations Legislation Amendment Act 2021* section 84 comes into operation;

***former section*** means a section of this Act as in operation immediately before the commencement day.

*[Section 40 inserted: No. 30 of 2021 s. 95.]*

### **41. Business transmitted before commencement day**

- (1) This section applies in relation to the transmission, as defined in former section 6(5), of a business before the commencement day.
- (2) For the purposes of determining whether an employee in the business has had continuous employment with an employer, on and after the commencement day —
  - (a) former sections 6 and 8 continue in operation; and
  - (b) Part II Division 3 does not apply.

*[Section 41 inserted: No. 30 of 2021 s. 95.]*

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## Notes

This is a compilation of the *Long Service Leave Act 1958* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Long Service Leave Act 1958</i>	44 of 1958 (7 Eliz. II No. 44)	12 Dec 1958	24 Dec 1958 (see s. 2 and <i>Gazette</i> 24 Dec 1958 p. 3371)
<b>Reprint of the <i>Long Service Leave Act 1958</i> authorised 30 Jan 1963</b>			
<i>Long Service Leave Act Amendment Act (No. 2) 1964</i>	37 of 1964 (13 Eliz. II No. 37)	12 Nov 1964	12 Nov 1964
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Long Service Leave Act Amendment Act 1973</i>	97 of 1973	27 Dec 1973	1 Mar 1974 (see s. 2 and <i>Gazette</i> 1 Mar 1974 p. 648)
<b>Reprint of the <i>Long Service Leave Act 1958</i> approved 11 Jul 1974</b> (includes amendments listed above)			
<i>Acts Amendment (Industrial Magistrate's Courts) Act 1991 Pt. 4</i>	44 of 1991	17 Dec 1991	3 Jan 1992 (see s. 2 and <i>Gazette</i> 3 Jan 1992 p. 41)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995 Pt. 8</i> <sup>1</sup>	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
<i>Labour Relations Reform Act 2002 s. 20</i>	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<b>Reprint 3: The <i>Long Service Leave Act 1958</i> as at 16 May 2003</b> (includes amendments listed above)			
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 7</i> published in <i>Gazette</i> p. 3685-92			15 Sep 2003 (see r. 2)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 50</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Labour Relations Legislation Amendment Act 2006</i> Pt. 7 Div. 2 <sup>2</sup>	36 of 2006	4 Jul 2006	4 Jul 2006 (see s. 2(1))
<b>Reprint 4: The Long Service Leave Act 1958 as at 1 Sep 2006</b> (includes amendments listed above)			
<i>Legal Profession Act 2008</i> s. 676	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Training Legislation Amendment and Repeal Act 2008</i> s. 54	44 of 2008	10 Dec 2003	10 Jun 2009 (see s. 2(2))
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Industrial Relations Legislation Amendment Act 2021</i> Pt. 4	30 of 2021	22 Dec 2021	20 Jun 2022 (see s. 2(1)(b) and SL 2022/79 cl. 2)
<i>Legal Profession Uniform Law Application Act 2022</i> s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)

### Other notes

- <sup>1</sup> The *Industrial Relations Legislation Amendment and Repeal Act 1995* Pt. 8 Div. 2 are savings and transitional provisions that are of no further effect.
- <sup>2</sup> The *Labour Relations Legislation Amendment Act 2006* Pt. 7 Div. 3 reads as follows:

#### **Division 3 — Repeal of the LSL General Order**

##### **63. Meaning of terms used in this Division**

In this Division —

**Commission** means The Western Australian Industrial Relations Commission;

**employer** has the meaning given to that term in the *Long Service Leave Act 1958* section 4;

**industrial instrument** means —

- (a) an award under the *Coal Industry Tribunal of Western Australia Act 1992*;
- (b) an order under the *Coal Industry Tribunal of Western Australia Act 1992* or an agreement that comes within section 12(4) or 17(1) of that Act;
- (c) an award as defined in the *Industrial Relations Act 1979* section 7(1);
- (d) an industrial agreement as defined in the *Industrial Relations Act 1979* section 7(1);
- (e) an order of the Commission under the *Industrial Relations Act 1979*;
- (f) an employer-employee agreement under the *Industrial Relations Act 1979* Part VID; or
- (g) any other agreement between a person and an employer, as such, that deals with long service leave;

**LSL General Order** means the General Order relating to long service leave made by the Commission on 27 January 1978 and published in the *Western Australian Industrial Gazette* on 22 February 1978 at page 120 and the Schedule attached to that order published in that *Gazette* on 25 January 1978 at pages 1 to 6.

**64. LSL General Order repealed**

The LSL General Order is repealed.

**65. Transitional provision — references to the LSL General Order**

- (1) The object of this section is to ensure that where, before commencement, a person's long service leave rights, entitlements or obligations arose under an industrial instrument by reference to the LSL General Order that person's long service leave rights, entitlements or obligations arise, after commencement, under the instrument by reference to the *Long Service Leave Act 1958*.
- (2) Unless the contrary intention appears or the context otherwise requires, a reference in an industrial instrument to the LSL General Order, or a provision of that Order, is, after commencement, to be read as a reference to the *Long Service Leave Act 1958*, or the corresponding provision of that Act, (whichever is relevant) and the instrument is to be construed so as to give effect to the object of this section.
- (3) Subsection (2) applies to references that, after commencement, have ongoing effect.
- (4) A provision of the *Long Service Leave Act 1958* corresponds to a provision of the LSL General Order if the provisions deal with substantially the same matter.

- (5) In this section —  
**commencement** means the coming into operation of the *Labour Relations Legislation Amendment Act 2006* Part 7 Division 2.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
apprentice.....	4(1)
award.....	4(1)
award, agreement or enactment .....	4A(1)
business.....	4(1)
commencement day .....	8(10), 40
connection between the old employer and the new employer.....	7D, 7G(1), (2), (3) and (4)
continuous employment .....	4(1), 6(1), (2), (3), (4), (5), (6) and (7)
employee.....	4(1)
employer .....	4(1)
employer-employee agreement.....	4(1)
employment records.....	7I(1)
entitlement .....	4A(1)
former section .....	40
industrial agreement.....	4(1)
industrial inspector.....	4(1)
industrial magistrate's court.....	4(1)
IR Act.....	4(1)
MCE Act.....	4(1)
new employer.....	7D, 7E
old employer .....	7D, 7E
ordinary pay .....	4(1), 7(1) and (4), 7A, 7B, 7C(1)
related body corporate.....	4(1)
separate LSL entitlement .....	4A(2) and (3)
transfer of business .....	7D, 7E
transferring employee .....	7D, 7F
transferring work.....	7D, 7E
WA LSL.....	4A(1)