

# **LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) ACT 1976**

## **No. 192 of 1976**

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# LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) ACT 1976

No. 192 of 1976

An Act to make Provision for Long Service Leave in respect of Employees of the Commonwealth and certain other Persons, and for other purposes.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

- Short title.        1. This Act may be cited as the *Long Service Leave (Commonwealth Employees) Act 1976*.<sup>1</sup>
- Commence-  
ment.              2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>
- Repeal and  
savings.           3. (1) The following Acts are repealed:—  
*Commonwealth Employees' Furlough Act 1943*  
*Commonwealth Employees' Furlough Act 1944*  
*Commonwealth Employees' Furlough Act 1951*  
*Commonwealth Employees' Furlough Act 1953*  
*Commonwealth Employees' Furlough Act 1958*  
*Commonwealth Employees' Furlough Act 1959*  
*Commonwealth Employees' Furlough Act 1967*  
*Commonwealth Employees' Furlough Act 1968*  
*Commonwealth Employees' Furlough Act (No. 2) 1968*  
*Commonwealth Employees' Furlough Act 1973.*
- (2) The repeal of the Acts specified in sub-section (1) does not affect a grant, under those Acts, before the commencement of this Act, of leave of absence for a period commencing after, or extending after, the commencement of this Act, and this Act applies to and in relation to any leave of absence so granted that occurs after the commencement of this Act as if it had been granted under this Act.
- (3) The repeal of the Acts specified in sub-section (1) does not prevent—
- (a) the giving, under those Acts, of a direction that the death of a person is to be presumed to have occurred on a date before the commencement of this Act; or
  - (b) the making, under those Acts, of any payment that could have been made if the direction had been given before the commencement of this Act.

(4) Where it was provided by an Act in force immediately before the commencement of this Act that a body was an authority of the Commonwealth for the purposes of the *Commonwealth Employees' Furlough Act 1943*, that body is a public authority of the Commonwealth for the purposes of this Act.

(5) Regulations made under the Acts repealed by sub-section (1) and in force immediately before the commencement of this Act continue in force for the purposes of this Act as if they had been made under this Act, but may be repealed or amended by regulations made under this Act.

4. (1) In this Act, unless the contrary intention appears—

Interpretation.

“approving authority” means—

- (a) in relation to a person who is, or was at the time of his ceasing to be an employee whether by reason of death or otherwise, employed in the Department of the Senate—the President of the Senate;
- (b) in relation to a person who is, or was at the time of his ceasing to be an employee whether by reason of death or otherwise, employed in the Department of the House of Representatives—the Speaker of the House of Representatives;
- (c) in relation to a person who is, or was at the time of his ceasing to be an employee whether by reason of death or otherwise, employed in the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff or the Joint House Department—the President of the Senate and the Speaker of the House of Representatives;
- (d) in relation to a person who is, or was at the time of his ceasing to be an employee whether by reason of death or otherwise, the holder of an office or appointment, being an office or appointment to which this paragraph applies or applied by virtue of sub-section (8)—the person authorized to grant leave to the holder of the office or appointment by the law establishing the office or providing for the making of the appointment; or
- (e) in relation to any other person—the Public Service Board;

“category A employee” means—

- (a) an employee the whole of whose employment that counts as employment in a qualifying service for the purposes of this Act has been employment in a full-time capacity; or

(b) an employee the whole of whose employment that counts as employment in a qualifying service for the purposes of this Act has been employment in a part-time capacity;

“category B employee” means an employee other than a category A employee;

“employee” means a person who is to be taken, by virtue of section 10, to be employed in Government Service for the purposes of this Act;

“leave” means leave of absence;

“long service leave” includes long leave, furlough, extended leave and any other leave in the nature of long service leave (howsoever referred to);

“officer” has the same meaning as in the *Public Service Act 1922*;

“public authority of the Commonwealth” means an authority established or constituted by or under a law of the Commonwealth or of an internal Territory;

“retrenchment”, in relation to an employee, means the compulsory termination of the service of the employee for the reason that—

(a) his service or position is not necessary;

(b) the work for which he was engaged is finished; or

(c) a reduction in the number of employees is necessary because the quantity of work has diminished.

(2) Subject to section 13, a reference in this Act to employment in a qualifying service is a reference to employment in Government Service or in a service referred to in sub-section 11 (2).

(3) For the purposes of references in this Act to a number of months (other than a reference to a number of completed months), the number of months shall be taken to be, where appropriate, a whole number and a fraction.

(4) For the purposes of references in this Act to a number of years (other than a reference to a number of completed years), the number of years shall be taken to be, where appropriate, a whole number and a fraction.

(5) For the purposes of this Act, a member of the Defence Force shall be deemed to be employed in the Defence Force, and, in the case of a member not engaged on full-time service, shall be deemed to be so employed while he is performing his duties as such a member.

(6) A reference in this Act to a person who is employed by, remunerated by, in the service of, on loan to or appointed or engaged by the Commonwealth shall be read as including a reference to a person who is employed by, remunerated by, in the service of, on loan to or appointed or engaged by—

- (a) a public authority of the Commonwealth; or
- (b) a body (not being a public authority of the Commonwealth) established by or under a law of the Commonwealth or of an internal Territory that is declared by the regulations to be a body to which this sub-section applies.

(7) For the purposes of this Act—

- (a) a member of the Police Force of the Australian Capital Territory shall be deemed to be employed in Government Service; and
- (b) a member of the Police Force of the Northern Territory shall be deemed to be employed in the Public Service of that Territory.

(8) Where—

- (a) a provision of a law of the Commonwealth or of an internal Territory authorizes, whether expressly or otherwise, the Governor-General or a Minister to grant leave of absence to the holder of an office established by, or of an appointment made under, that law; and
- (b) the holder of the office or appointment is, for the purposes of this Act, to be taken to be employed in Government Service by reason of holding the office or appointment,

the office is an office, or the appointment is an appointment, as the case may be, to which paragraph (d) of the definition of “approving authority” in sub-section (1) applies.

(9) For the purposes of this Act, the minimum retiring age of an employee is—

(a) in the case of an employee who is an officer—

- (i) subject to sub-paragraph (ii)—the age upon the attainment of which the officer is, under section 85 of the *Public Service Act* 1922, required to retire from the Australian Public Service; or
- (ii) if, under that section, he may retire from the Australian Public Service by reason only of his having attained an age that is less than the age upon the attainment of which he is so required to retire from the Australian Public Service—that lesser age;

(b) in the case of an employee who is employed under the *Public Service Act* 1922 otherwise than as an officer—

- (i) subject to sub-paragraph (ii)—the age of 60 years; or
- (ii) if the Public Service Board has, for the purposes of this Act, fixed an age less than 60 years of age as the minimum retiring age in respect of a class of employees in which the employee is included—the age so fixed;

- (c) in the case of an employee who is employed by a public authority of the Commonwealth otherwise than in a permanent capacity—
  - (i) subject to sub-paragraph (ii)—the age of 60 years; or
  - (ii) if the public authority has, for the purposes of this Act, fixed an age less than 60 years of age as the minimum retiring age in respect of a class of employees in which the employee is included—the age so fixed; or
- (d) in the case of any other employee—
  - (i) if, under the terms and conditions of his employment, an age that is less than 60 years of age is fixed as the age upon the attainment of which he is required to retire from his employment and no other age is fixed as the age upon the attainment of which he may retire from his employment—the age fixed as the age upon the attainment of which he is required to retire from his employment;
  - (ii) if, under the terms and conditions of his employment, an age that is less than 60 years of age is fixed as the age upon the attainment of which he may retire from his employment and the age so fixed is less than the age fixed as the age upon the attainment of which he is required to retire from his employment or no age is fixed as the age upon the attainment of which he is required to retire from his employment—the age fixed as the age upon the attainment of which he may retire from his employment; or
  - (iii) if sub-paragraph (i) or (ii) does not apply in relation to the employee—the age of 60 years.

Application  
of the Act.

5. Where a person is or has been employed in Government Service on or after the commencement of this Act, this Act applies to and in relation to any employment of that person in a qualifying service at any time before or after the commencement of this Act.

Meaning of  
authority of  
a State.

6. Subject to regulations made in accordance with section 7, a reference in this Act to an authority of a State shall be read as a reference to—

- (a) an authority, whether incorporated or not, that was or is constituted by or under the law of a State for a public purpose; or
- (b) a local governing body that was or is established by or under a law of a State.

7. (1) The regulations may provide that a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the regulations shall, for the purposes of this Act, be deemed to be, or to have been, an authority of a State.

Regulations with respect to previous service with prescribed authorities, &c.

(2) The regulations may provide that previous employment of an employee in the service of a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the regulations shall be taken into account for the purposes of section 11 as if it had been employment in Government Service.

(3) Regulations made in accordance with this section—

- (a) may refer to a specified person, authority, institution or body or to persons, authorities, institutions or bodies included in a specified class of persons, authorities, institutions or bodies;
- (b) may be expressed to have effect in respect only of employment in specified cases or circumstances; and
- (c) may be expressed to have effect in respect only of employment on or after a particular date, before a particular date or during a particular period.

8. (1) The regulations may provide that allowances of specified kinds are to be included in salary for the purposes of this Act or of a provision of this Act.

Meaning of salary.

(2) The regulations may prescribe the conditions subject to which, or specify the extent to which, payments in accordance with this Act, or in accordance with a provision of this Act, are to include amounts by way of, or in respect of, an allowance of a kind specified in the regulations referred to in sub-section (1), including conditions having effect after the time at which leave commences.

(3) In the case of an employee who receives, or of employees included in a class of employees who receive, salary otherwise than by way of uniform amounts in respect of uniform periods, the regulations may provide that an amount ascertained in the manner provided by the regulations is to be the annual salary for the purposes of this Act of the employee or of the employees included in the class of employees.

9. (1) The Public Service Board may, either generally or as otherwise provided by the instrument of delegation, by instrument under the hands of the members, or of a majority of the members, of the Board, delegate to—

Delegation by Public Service Board.

- (a) a member of the Board;
- (b) an officer or employee of the Australian Public Service; or
- (c) a public authority of the Commonwealth, a member of such an authority or a person employed by such an authority,

any of its powers under this Act or under the regulations, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Public Service Board.

(3) A delegation under this section does not prevent the exercise of a power by the Public Service Board.

Meaning of  
employment  
in  
Government  
Service.

10. (1) Subject to this section, a person shall, for the purposes of this Act, be taken to be employed in Government Service if the person is employed by the Commonwealth, whether he is so employed under a law or under a contract of service or apprenticeship and whether he is employed in a full-time or in a part-time capacity.

(2) Without limiting by implication the generality of sub-section (1), but subject to this section, a person—

- (a) who constitutes, or is acting as the person constituting, a public authority of the Commonwealth; or
- (b) is, or is acting as, a member of such an authority or is a deputy of such a member,

shall, for the purposes of this Act, be deemed to be employed in Government Service, and his employment shall, for those purposes, be deemed to be constituted by the performance of the duties of the authority, his duties as such a member or person acting as such a member or his duties as such a deputy, as the case may be.

(3) Subject to sub-section (4), this Act does not apply to a person in respect of any period during which he held or holds office as a Judge as defined by section 4 of the *Judges' Pensions Act* 1968 or as the Solicitor-General.

(4) If a person appointed as a Judge as defined by section 4 of the *Judges' Pensions Act* 1968 or as the Solicitor-General was, immediately before his appointment, a person to whom this Act, an Act repealed by this Act or sections 73 and 74 of the *Public Service Act* 1922 applied, the person may, within 3 months after his appointment as a Judge or as the Solicitor-General or, if he was appointed as such a Judge or as Solicitor-General before the commencement of this Act, within 3 months after the commencement of this Act, elect, by notice in writing to the Attorney-General, that sub-section (3) shall not apply to him and this Act shall then be deemed to have applied, or to apply, to and in relation to him in respect of any period during which he held or holds the appointment as if the performance of the duties of the appointment constituted employment in Government Service.

(5) This Act does not apply to a person who was employed immediately before 7 October 1944 under the *Commonwealth Railways Act* 1917-1936 if the provisions of a by-law in force under the *Australian National Railways Act* 1917, being provisions for the granting of long service leave or pay in lieu of long service leave, are applicable to him.



- (6) A person—
- (a) who is remunerated by the Commonwealth by fees, allowances or commission;
  - (b) who is a member of the Defence Force;
  - (c) who is employed by the Commonwealth in an honorary capacity;
  - (d) who is employed in the Public Service of a Territory;
  - (e) who is temporarily transferred to the service of the Commonwealth from the service of a State or an authority of a State, or whose services are temporarily loaned to the Commonwealth by a State or an authority of a State;
  - (f) who holds an office or is employed under the *Reserve Bank Act 1959* or the *Commonwealth Banks Act 1959*; or
  - (g) who is, after the commencement of this Act, appointed or engaged for employment outside Australia only,

shall not be taken, by reason only of his being such a person, to be employed in Government Service for the purposes of this Act.

(7) This section applies in relation to employment before the commencement of this Act in like manner as it applies in relation to employment after the commencement of this Act.

**11. (1)** Subject to this Act, the period of service of an employee for the purposes of this Act is the period during which he has been employed continuously in Government Service. Period of service.

(2) Where, prior to his current period of employment in Government Service, an employee was employed continuously in—

- (a) any service of a State;
- (b) any service of an authority of a State;
- (c) the Public Service of a Territory;
- (d) any service of an authority established or constituted by or under a law of an external Territory;
- (e) the Public Service of the former Territory of Nauru; or
- (f) other relevant service,

and the period for which he was so employed was continuous with his current period of employment, his period of service for the purposes of this Act includes, subject to this Act, the period for which he was so employed.

(3) Where an employee has been employed—

- (a) in 2 or more of the services referred to in paragraphs (2) (a), (b), (c), (d), (e) and (f); or
- (b) in 1 or more of those services and, at any time prior to his current period of employment, in Government Service,

and the periods for which he was so employed are continuous with one another and with his current period of employment, the sum of these periods of employment shall, subject to this Act, be included in his period of service for the purposes of this Act.

(4) The period of service of an employee does not include any period during which—

(a) he was or is employed in a qualifying service in an honorary capacity and was not or is not also employed in a qualifying service in some other capacity, not being employment in respect of which he was or is remunerated by fees, allowances or commission only; or

(b) he was or is remunerated, in respect of employment in a qualifying service, by fees, allowances or commission only and was not or is not remunerated in respect of other employment in a qualifying service in some other manner.

(5) For the purposes of paragraph (2) (f), employment—

(a) as a member of the Defence Force;

(b) as a person holding an office, or employed, under the *Reserve Bank Act 1959* or the *Commonwealth Banks Act 1959*; or

(c) outside Australia as a person appointed or engaged by the Commonwealth after the commencement of this Act for employment outside Australia only,

shall be deemed to be employment in other relevant service.

Continuity of  
service.

12. (1) Where a person is, or has been, absent, without the approval of his employer, from his employment in a qualifying service, otherwise than for a continuous period of more than 12 months, the continuity of the employment of the person in that service shall be deemed not to be, or to have been, broken by that absence, but the person shall be deemed, for the purposes of this Act, not to be, or to have been, employed in that service during the period of the absence.

(2) For the purposes of this Act, a person shall be deemed not to break, or to have broken, the continuity of his employment in a qualifying service by reason of his being or having been—

(a) on leave of absence with pay or part pay; or

(b) on leave of absence without pay,

and, subject to sub-sections (3) and (4), the person shall be deemed, for the purposes of this Act, to have been employed in that service during the period of the absence.

(3) Subject to sub-section (4), where a person is or has been absent from his employment on leave of absence without pay (not being leave of absence on account of illness or in respect of a period of specified defence service referred to in sub-section (10)) and the period during which he is or was so absent would, but for this sub-section, be included in his

period of service, the period during which he is or was absent on that leave does not form part of his period of service for the purposes of this Act—

(a) unless—

(i) in a case where the leave of absence is or was granted under the *Public Service Act 1922*—the Public Service Board; or

(ii) in any other case—the person by whom the leave is or was granted,

determined at the time of the grant of that leave or at a subsequent time, otherwise than under this Act, that the period during which he is or was so absent be included in his period of service for the purpose of the granting to him of long service leave; or

(b) unless the approving authority determines under this Act that the period during which he is or was so absent be included in his period of service for the purposes of this Act.

(4) Where a person is or has been absent from his employment in Government Service on leave granted for the purpose of enabling him to occupy an executive office as provided in sub-section (11)—

(a) the period of the absence shall be reckoned as part of his period of service for the purpose of determining whether a provision of this Act that applies only to and in relation to employees whose periods of service are at least 1 year or 10 years, as the case may be, applies to and in relation to him; and

(b) the person shall be deemed not to have been employed in that service during the period of absence for any other purpose.

(5) Where a continuous period of employment of a person in a qualifying service has commenced after, but not more than 12 months after, the expiration of a continuous period of previous employment of the person in a qualifying service, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another.

(6) For the purposes of sub-section (5), where a person, having ceased to be employed in a qualifying service, has undertaken a course of full-time training—

(a) under a scheme established by the Commonwealth for the training of persons who have served in the Defence Force; or

(b) under a prescribed training scheme,

before resuming employment in a qualifying service, the resumption of his employment in a qualifying service shall be deemed to have occurred not more than 12 months after he ceased to be so employed if the period between his ceasing to be so employed and the resumption of that employment, less the period of his course of full-time training under that scheme, does not exceed 12 months.

(7) Where a continuous period of employment of a person in a service, being Government Service or a service referred to in paragraph 11 (2) (c), (d), (e) or (f), has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in such a service, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that—

- (a) the termination of his employment at the expiration of that period of previous employment was due to ill-health; and
- (b) the commencement of that first-mentioned period of employment occurred not more than 12 months after his health became so restored as to enable him to perform duties of a kind that were suitable to be performed by him having regard to the duties performed by him immediately before the expiration of that period of previous employment.

(8) Where—

- (a) a continuous period of employment of a person in a service, being a service referred to in paragraph 11 (2) (a) or (b), has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in a service, being Government Service or a service referred to in paragraph 11 (2) (c), (d), (e) or (f); or
- (b) a continuous period of employment of a person in a qualifying service has commenced after, but not immediately after, the expiration of a continuous period of previous employment of the person in a service referred to in paragraph 11 (2) (a) or (b),

those periods of employment referred to in paragraph (a) or (b) of this sub-section, whichever is applicable, shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that—

- (c) the termination of his employment at the expiration of that period of previous employment was due to ill-health;
- (d) the person was, due to his ill-health, unemployed for a period immediately following the expiration of that period of previous employment; and
- (e) the commencement of the period of employment first-mentioned in paragraph (a) or (b), whichever is applicable, occurred not more than 12 months after the expiration of the period of unemployment referred to in paragraph (d).

(9) A person shall not be deemed, for the purposes of this Act, to have been employed in a qualifying service during a period that would, but for sub-section (5), (6), (7) or (8), have broken the continuity of his service.

(10) For the purposes of sub-section (3), a person shall be taken to have been absent in respect of a period of specified defence service if he was, during that period, serving—

- (a) on continuous full-time service in a part of the Reserve Forces or of the Citizen Forces;
- (b) in a part of those Forces for such a period as was fixed by or in accordance with regulations in force under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923*, as in force at the relevant time; or
- (c) on national service.

(11) For the purposes of sub-section (4), an employee shall be taken to occupy an executive office if and only if—

- (a) he occupies an executive office in an organization (as defined in the *Conciliation and Arbitration Act 1904*)—
  - (i) of employees in an industry, within the meaning of that Act, connected with the employment of the employee; or
  - (ii) of employees engaged in an industrial pursuit related to the employment of the employee; or
- (b) he occupies an office that is a prescribed office for the purposes of this sub-section,

and he is required to devote the whole of his time to the duties of the office.

13. (1) In this section—

“Australian Staffing Assistance Group” means the body established under that name by the *Papua New Guinea (Staffing Assistance) Act 1973*;

“Papua New Guinea” has the same meaning as it had in the *Papua New Guinea Act 1949* as in force on 15 September 1975;

“relevant service” means—

- (a) the service of the Independent State of Papua New Guinea;
- (b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of the Independent State of Papua New Guinea; or
- (c) the service of the Commonwealth in respect of the Australian Staffing Assistance Group.

(2) This section applies in relation to a person, being an employee, who was, immediately before 16 September 1975, employed in—

- (a) the service of Papua New Guinea;
- (b) the service of a body (not being an incorporated company, society or association) established for a public purpose by or under a law of Papua New Guinea; or

Modifications of sections 11 and 12 in relation to service in the Independent State of Papua New Guinea.

(c) the service of the Commonwealth as a member of the Australian Staffing Assistance Group.

(3) Where, during a period (in this section referred to as the “period of his relevant employment”) that commenced on 16 September 1975—

(a) a person to whom this section applies was employed continuously in a service referred to in paragraph (a) or (b) of the definition of “relevant service” in sub-section (1); or

(b) a person to whom this section applies was employed continuously in 2 or more of the services referred to in that definition and the periods for which he was so employed were continuous with one another,

the person—

(c) shall, for the purposes of sub-section 11 (2), be deemed to have been continuously employed in other relevant service during the period of his relevant employment; and

(d) shall, for the purposes of the provisions of this Act other than sections 11, 12 and 14, be deemed to have been continuously employed in a qualifying service during the period of his relevant employment.

(4) For the purposes of sub-section (3)—

(a) a period of employment of a person after 15 September 1975 in the service of the Commonwealth as a member of the Australian Staffing Assistance Group shall not be included in his period of relevant employment unless it was continuous with, and immediately preceded, a period during which he was employed in a service referred to in paragraph (a) or (b) of the definition of “relevant service” in sub-section (1); and

(b) a person shall be taken not to have been employed in the service of a body, being the Commonwealth, the Independent State of Papua New Guinea or a body referred to in paragraph (b) of the definition of “relevant service” in sub-section (1), during a period—

(i) during which he was employed by that body in an honorary capacity only; or

(ii) in respect of which he was remunerated for his services to that body by fees, allowances or commission only.

(5) For the purposes of sub-section (3), sub-sections 12 (1), (2), (3) and (10) apply to and in relation to any employment of a person to whom this section applies after 15 September 1975 in a relevant service as if it were employment in a qualifying service.

(6) Where a continuous period of employment of a person to whom this section applies in a qualifying service has commenced after, but not more than 12 months after, the expiration of the period of his relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another.

(7) For the purposes of sub-section (6), where a person to whom this section applies has undertaken a course of full-time training—

- (a) under a scheme established by the Commonwealth for the training of persons who have served in the Defence Force; or
- (b) under a training scheme that is a prescribed training scheme for the purposes of paragraph 12 (6) (b),

after the expiration of the period of his relevant employment and before he has become employed in a qualifying service, he shall be deemed to have become employed in the qualifying service not more than 12 months after the expiration of the period of his relevant employment if the period between the date of expiration of the period of his relevant employment and the date on which he became employed in the qualifying service, less the period of his course of full-time training under that scheme, does not exceed 12 months.

(8) Where a continuous period of employment of a person to whom this section applies in a service of a kind referred to in paragraph 11 (2) (c), (d) or (f) has commenced after, but not immediately after, the expiration of the period of his relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that—

- (a) the termination of his employment at the expiration of the period of his relevant employment was due to his ill-health; and
- (b) the commencement of that first-mentioned period of employment occurred not more than 12 months after his health became so restored as to enable him to perform duties of a kind that were suitable to be performed by him having regard to the duties performed by him immediately before the expiration of the period of his relevant employment.

(9) Where a continuous period of employment of a person to whom this section applies in a service of a kind referred to in paragraph 11 (2) (a) or (b) has commenced after, but not immediately after, the termination of the period of his relevant employment, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another if the approving authority is satisfied that—

- (a) the termination of his employment at the expiration of his period of relevant employment was due to his ill-health;
- (b) he was, due to his ill-health, unemployed for a period immediately following the expiration of the period of his relevant employment; and
- (c) he became employed in that first-mentioned employment not more than 12 months after the expiration of the period of unemployment referred to in paragraph (b).

(10) Where, by virtue of sub-section (6), (7), (8) or (9), 2 periods of employment of a person to whom this section applies are to be deemed to be continuous with one another although they are separated by

another period, the person shall not, by virtue of that sub-section, be deemed to be employed in a qualifying service during that other period.

(11) A person employed in the service of the Commonwealth as a member of the Australian Staffing Assistance Group who is not so employed on transfer from the Australian Public Service under an arrangement made under section 47D of the *Public Service Act 1922* shall not be taken, by reason only of being employed as a member of that Group, to be, or to have been, employed in Government Service for the purposes of this Act while employed as a member of that Group.

(12) Notwithstanding sub-section (11), where a person who is employed in the service of the Commonwealth otherwise than as a member of the Australian Staffing Assistance Group has, at any time prior to his current period of employment, been employed by the Commonwealth as a member of that Group, the period or periods during which he was employed as a member of that Group prior to his current period of employment shall be treated as a period or periods of employment in Government Service for the purposes of this Act.

Concurrent  
employment.

14. (1) Where the period of service of an employee includes a period of employment in a qualifying service that is wholly or partly concurrent with a period of employment in another qualifying service, sub-sections (3), (4) and (5) apply for the purpose of determining the extent (if any) to which each of those periods is to count in ascertaining the period of leave that may at any time be granted to the employee under this Act or the payment that may at any time be made under this Act to or in respect of the employee.

(2) In applying sub-sections (3), (4) and (5) to and in relation to an employee—

- (a) sub-section (3) shall, if applicable, be applied before sub-section (4) or (5); and
- (b) sub-section (4) shall, if applicable, be applied before sub-section (5).

(3) Where, on the day on which leave is granted to an employee under this Act or an employee ceases to be an employee, the employee is also employed in a qualifying service other than Government Service, so much of his current period of employment in that first-mentioned service as is or was concurrent with any of his employment in Government Service does not count as employment in that first-mentioned service.

(4) Where a person is or was employed in a qualifying service in a full-time capacity, any employment in a qualifying service in a part-time capacity that is or was concurrent with that first-mentioned employment does not count as employment in such a service.

(5) Where a person who is or was employed in a qualifying service in a part-time capacity renders or rendered on a day service for a period



in accordance with the terms of his employment and the person also renders or rendered service for a further period on that day in accordance with the terms of other employment in a part-time capacity in a qualifying service, his period of employment on that day shall be taken to be a period equal to the sum of those periods.

(6) This section applies in relation to the employment of an employee to whom section 13 applies during the period referred to in that section as the period of his relevant employment as if—

- (a) in a case where he was employed in one service only during that period—his employment in that service was employment in a qualifying service; or
- (b) in a case where he was employed in 2 or more services during that period—his employment in each such service was employment in a qualifying service.

15. (1) This Act—

- (a) does not affect the operation of an award, order or agreement in force immediately before the commencement of this Act under the *Conciliation and Arbitration Act* 1904 in relation to long service leave for seamen included in a prescribed class of seamen; and
- (b) shall not be deemed to prevent the making of an award (including an award having effect from a date before the commencement of this Act) or an order, or the certification of an agreement, under that Act in relation to long service leave for seamen included in a prescribed class of seamen, or to affect the operation of such an award, order or agreement,

Award, &c.,  
in relation to  
long service  
leave for  
seamen.

and sub-section 41A (2) of that Act, or that sub-section in its application in accordance with section 74 of that Act, does not apply in relation to any such award.

(2) Where an employee has, in accordance with an award, order or agreement referred to in sub-section (1), been granted long service leave, or been paid in lieu of long service leave, in respect of a period of employment, no part of that period of employment shall be included in the period of service of the employee for the purposes of this Act.

(3) Where immediately before the commencement of this Act, by virtue of sub-section 6A (2) of the *Commonwealth Employees' Furlough Act* 1943, a part of the period of employment of an employee was not included in the period of service of the employee for the purposes of that Act, that part of the period of employment of the employee shall not be included in the period of service of the employee for the purposes of this Act.

(4) In this section, "seamen" has the same meaning as in Division 2 of Part III of the *Conciliation and Arbitration Act* 1904.

Long service leave and payments in lieu of long service leave.

16. (1) Subject to section 17, an employee is not eligible to be granted long service leave unless his period of service is at least 10 years.

(2) Where the period of service of an employee is at least 10 years, the approving authority may, at any time, grant to the employee—

(a) in the case of a category A employee—long service leave on full salary for a period not exceeding his long service leave credit at that time; or

(b) in the case of a category B employee—long service leave on full salary in relation to his full-time service for a period not exceeding his long service leave credit related to his full-time service at that time or long service leave on full salary in relation to his part-time service for a period not exceeding his long service leave credit related to his part-time service at that time or both.

(3) Where a period of long service leave may at any time be granted to an employee under sub-section (2), the approving authority may, at the request of the employee, grant to him long service leave on half salary for a period not exceeding twice that first-mentioned period.

(4) Subject to sub-sections (5) and (6), where an employee whose period of service is at least 10 years ceases to be an employee otherwise than by death, the approving authority shall authorize payment to him of an amount equal to—

(a) in the case of a category A employee—the amount of salary that would be payable to him for a period of service equal to the period of his long service leave credit immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave immediately before he ceases to be an employee; or

(b) in the case of a category B employee—the sum of—

(i) the amount of salary that would be payable to him for a period of service equal to the period of his long service leave credit related to his full-time service immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave related to his full-time service immediately before he ceases to be an employee; and

(ii) the amount of salary that would be payable to him for a period of service equal to the period of his long service leave credit related to his part-time service immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave related to his part-time service immediately before he ceases to be an employee.

(5) Sub-section (4) does not apply to an employee who requests the approving authority in writing, before he ceases to be an employee, not to authorize payment to him under that sub-section.

(6) Where an employee requests the approving authority in writing before he ceases to be an employee to authorize a payment to him, upon his ceasing to be an employee, of a specified amount, being an amount less than the amount that would otherwise be payable to him under sub-section (4), that sub-section does not empower the approving authority to authorize a payment to him of an amount greater than the amount so specified.

(7) Where an employee whose period of service is at least 10 years dies, the approving authority may authorize payment to a dependant of the employee of an amount equal to, or payments to any 2 or more dependants of the employee of amounts aggregating, the amount that would have been payable to the employee under sub-section (4) if the employee had ceased to be an employee otherwise than by death on the day on which the employee died.

17. (1) Where an employee whose period of service is less than 10 years but not less than 1 year is to cease to be an employee—

- (a) on or subsequent to his attaining the minimum retiring age; or
- (b) upon his retrenchment,

the approving authority may grant to him long service leave on full salary, to be taken so as to expire immediately before he is to cease to be an employee, being—

- (c) in the case of a category A employee—long service leave for a period not exceeding his long service leave credit immediately before he commences that leave; or
- (d) in the case of a category B employee—long service leave in relation to his full-time service for a period not exceeding his long service leave credit related to his full-time service, and long service leave in relation to his part-time service for a period not exceeding his long service leave credit related to his part-time service, immediately before he commences whichever of those periods of leave he commences first.

(2) Subject to sub-sections (3) and (4), where an employee whose period of service is less than 10 years but not less than 1 year—

- (a) ceases to be an employee, otherwise than by reason of his death, on, or subsequent to, his attaining the minimum retiring age;
- (b) ceases to be an employee by reason of his retrenchment; or
- (c) ceases to be an employee and satisfies the approving authority that his so ceasing is due to ill health of such a nature as to justify his so ceasing,

Extended leave or pay in lieu of leave for employees not entitled to long service leave.

the approving authority shall authorize payment to him—

- (d) in the case of a category A employee—of an amount equal to the amount of salary that would be payable to him for a period of service equal to the period of his long service leave credit immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave immediately before he ceases to be an employee; or
- (e) in the case of a category B employee—of an amount equal to the sum of—
  - (i) the amount of salary that would be payable to him in respect of a period of service equal to the period of his long service leave credit related to his full-time service immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave related to his full-time service immediately before he ceases to be an employee; and
  - (ii) the amount of salary that would be payable to him for a period of service equal to the period of his long service leave credit related to his part-time service immediately before he ceases to be an employee if salary were payable to him in respect of that period at the rate that is, by virtue of section 21, the rate applicable to him in relation to his long service leave related to his part-time service immediately before he ceases to be an employee.

(3) Sub-section (2) does not apply to an employee who requests the approving authority in writing, before he ceases to be an employee, not to authorize a payment to him under that sub-section.

(4) Where an employee requests the approving authority in writing before he ceases to be an employee to authorize a payment to him, upon his ceasing to be an employee, of a specified amount, being an amount less than the amount that would otherwise be payable to him under sub-section (2), that sub-section does not empower the approving authority to authorize a payment to him of an amount greater than the amount so specified.

(5) Where an employee whose period of service is less than 10 years but not less than 1 year dies, the approving authority may authorize payment to a dependant of the employee of an amount equal to, or to 2 or more dependants of the employee of amounts aggregating, the amount that would have been payable to the employee under sub-section (2) if the employee had, on the day on which the employee died, ceased to be

an employee otherwise than by reason of his death on, or subsequent to, his attaining the minimum retiring age.

**18. (1)** For the purposes of sections 16 and 17—

- (a) the long service leave credit of a category A employee on a day is the period equal to the number of months ascertained in accordance with the formula—

Calculation  
of long  
service leave  
credit.

$$\frac{3a}{10} - b$$

where—

- a is the number of years comprised in the part of his period of service that accrued before the prescribed day; and
  - b is the number of months comprised in the period or the sum of the periods of long service leave (if any) previously granted to him;
- (b) the long service leave credit related to the full-time service of a category B employee on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3c}{10} - d$$

where—

- c is the number of years comprised in a period equal to the period, or the sum of the periods, of his employment in a full-time capacity included in the part of his period of service that accrued before the prescribed day; and
  - d is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to him in relation to his full-time service; and
- (c) the long service leave credit related to the part-time service of a category B employee on a day is the period equal to the number of months ascertained in accordance with the formula—

$$\frac{3e}{10} - f$$

where—

- e is the number of years comprised in a period equal to the period, or the sum of the periods, of his employment in a part-time capacity included in the part of his period of service that accrued before the prescribed day; and
- f is the number of months comprised in the period, or the sum of the periods, of long service leave (if any) previously granted to him in relation to his part-time service.

- (2) In this section, “prescribed day” means—
- (a) in relation to a long service leave credit of an employee on the day on which he ceases to be an employee—the day immediately following the last day of the last completed month in the employee’s period of service ending on the day on which he ceases to be an employee; or
  - (b) in relation to a long service leave credit of an employee on any other day—the day immediately following the last day of the last completed year of service included in the employee’s period of service ending on that other day.

Application  
of section 18.

19. (1) Subject to sub-section (2), in the application of section 18 to and in relation to an employee—

- (a) a reference to a period of long service leave granted to him is a reference to a period of long service leave granted to him, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of his employment that is included in his period of service;
- (b) a reference to a period of long service leave granted to him in relation to his full-time service is a reference to a period of long service leave granted to him, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of employment in a full-time capacity that is included in his period of service; and
- (c) a reference to a period of long service leave granted to him in relation to his part-time service is a reference to a period of long service leave granted to him, whether before or after the commencement of this Act, under this Act or otherwise in respect of a period of employment in a part-time capacity that is included in his period of service.

(2) In the application of section 18, to and in relation to an employee—

- (a) if the employee has been granted long service leave on half salary under this Act or otherwise in respect of a period of his employment included in his period of service for the purposes of this Act, the period of that leave shall be deemed to have been a period equal to half that period;
- (b) if the approving authority is satisfied that long service leave that was granted to the employee otherwise than under this Act, under any of the Acts repealed by this Act or under the *Public Service Act 1922* in respect of a period of employment included in his period of service for the purposes of this Act was not granted to him on full salary or half salary having regard to the terms and conditions of the employment, the period of that long service leave shall be deemed to have been such a period as is determined by the approving authority to be the period of long

service leave that the employee would have been granted in respect of that employment if he had been granted long service leave on full salary;

- (c) if the employee has been paid an amount under this Act, under any of the Acts repealed by this Act or under section 54C, 73, 74, 75A, 81K or 81V of the *Public Service Act* 1922 in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in his period of service for the purposes of this Act, the employee shall be deemed to have been granted, on the day on which that payment was made to him, a period of long service leave in relation to his full-time service or to his part-time service, as the case may be, equal to the period of long service leave on full salary in relation to which that payment was made to him; and
- (d) if the employee has, in circumstances that are similar to the circumstances in which an amount is payable to an employee under section 16 or 17, been paid an amount otherwise than under this Act or a section of the *Public Service Act* 1922 referred to in paragraph (c) in respect of a period of employment in a full-time capacity, or in respect of a period of employment in a part-time capacity, that is included in his period of service for the purposes of this Act, the employee shall be deemed to have been granted, on the day on which that payment was made to him, such a period of long service leave in relation to his full-time service or in relation to his part-time service, as the case may be, as is determined by the approving authority to be equal to the period of his employment in respect of which that payment represented full salary.

**20.** (1) Where a period of long service leave is granted under section 16 or 17 to a category A employee on full salary, salary is payable to the employee in respect of any part of the leave—

Rate of salary while absent on long service leave.

- (a) if the employee has been employed in a full-time capacity throughout his period of service—at the rate that is his current rate of salary in respect of that part of the leave;
- (b) if the employee has been employed in a part-time capacity throughout his period of service and there has been no change during that period in the number of hours per week for which the employee has, by the terms of his employment, been required to render service—at the rate per week at which salary would be payable to him in respect of that part of the leave if he were not absent on long service leave but were continuing to render service for that number of hours per week in the capacity in which he was employed on the relevant day; or
- (c) if the employee has been employed in a part-time capacity throughout his period of service but there has been a change during that period in the number of hours per week for which he

was required by the terms of his employment to render service—at the rate per week ascertained by multiplying the relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his service.

(2) Where a period of long service leave on full salary is granted under section 16 or 17 to a category B employee who is employed in a full-time capacity on the relevant day—

- (a) salary is payable to the employee in respect of any part of that leave that is granted to him in relation to his full-time service—at the rate that is his current rate of salary in respect of that part of the leave; and
- (b) salary is payable to him in respect of any part of that leave that is granted to him in relation to his part-time service—at a weekly rate, being the lesser of—
  - (i) the rate that is his current rate of salary per week in respect of that part of the leave; and
  - (ii) the rate per week ascertained in accordance with the formula—

$$\frac{ab}{c}$$

where—

- a is the rate that is his current rate of salary per week in respect of that part of the leave;
- b is the prescribed average number of hours of his service; and
- c is the number of hours of service that he was, on the relevant day, required by the terms of his employment to render during a week.

(3) Where a period of long service leave on full salary is granted under section 16 or 17 to a category B employee who is employed in a part-time capacity on the relevant day—

- (a) salary is payable to him in respect of any part of the leave that is granted to him in relation to his full-time service—at the rate at which salary would be payable to him in respect of that part of the leave if he were not on long service leave but were rendering full-time service in the capacity in which he was employed on the relevant day; and
- (b) salary is payable to him in respect of any part of the leave that is granted in relation to his part-time service—at the rate per week ascertained by multiplying his relevant rate per hour in respect of that part of the leave by a number equal to the prescribed average number of hours of his service.

(4) In this section—



“current rate of salary”, in relation to a part of a period of long service leave that is granted to an employee, means the rate at which salary would be payable to him in respect of that part of the leave if he were not absent on long service leave but were continuing to be employed in the capacity in which he was employed on the relevant day;

“prescribed average number of hours” means—

- (a) in relation to a category A employee who is granted a period of long service leave—
  - (i) his average number of hours of employment per week during the relevant period; or
  - (ii) if the employee satisfies the approving authority that his average number of hours of employment per week during the relevant period is less than his average number of hours of employment per week during his period of service—that last-mentioned average number of hours; and
- (b) in relation to a category B employee who is granted a period of long service leave—
  - (i) his average number of hours of employment per week during the relevant period; or
  - (ii) if the employee satisfies the approving authority that his average number of hours of employment per week during the relevant period is less than his average number of hours of employment per week throughout his period or periods of employment in a part-time capacity included in his period of service—that last-mentioned average number of hours;

“relevant day”, in relation to an employee who has been granted long service leave, means the day immediately preceding the day on which that leave commences;

“relevant period” means—

- (a) in relation to a category A employee who has been granted a period of long service leave, the 12 months of his period of service ending on the day before the day on which the leave commences; and
- (b) in relation to a category B employee who has been granted a period of long service leave—
  - (i) the period of, or the periods aggregating, 12 months during which he was last employed in a part-time capacity before the day on which the leave commences; or
  - (ii) if he has not been employed in a part-time capacity for 12 months—the period or periods

during which he has been employed in a part-time capacity;

“relevant rate per hour”, in relation to a part of a period of long service leave that has been granted to an employee who was employed in a part-time capacity on the relevant day, means the rate per hour at which salary would be payable to him in respect of that part of the leave if he were not absent on long service leave but were continuing to render part-time service in the capacity in which he was employed on the relevant day.

Rate of salary in relation to pay in lieu of leave.

**21.** (1) For the purposes of sections 16 and 17, where an employee ceases to be an employee—

- (a) the rate applicable to him in relation to his long service leave;
- (b) the rate applicable to him in relation to his long service leave related to his full-time service; or
- (c) the rate applicable to him in relation to his long service leave related to his part-time service,

immediately before he ceases to be an employee is the rate at which full salary would be payable to him in respect of his employment on the day on which he ceases to be an employee (in this section referred to as “the terminating day”) if—

- (d) he were absent from duty on the terminating day in accordance with a period of long service leave, long service leave related to his full-time service or long service leave related to his part-time service, as the case requires, that had been granted to him on full salary to commence on the terminating day; and
- (e) on the day immediately before the terminating day he had completed the period of service that he completes on the terminating day.

(2) Where an employee is not employed in the same capacity on the terminating day and on the day immediately before the terminating day, sub-section (1) applies in relation to him as if he had been employed on the day immediately before the terminating day in the capacity in which he is employed on the terminating day.

Long service leave benefits not to be granted under other laws.

**22.** (1) Where a person who holds an office or appointment under a law of the Commonwealth or of an internal Territory, or is employed under such a law, is, for the purposes of this Act, employed in Government Service by virtue of holding that office or appointment or of being so employed, then, unless otherwise expressly provided by that law, nothing in that law shall be taken to authorize the provision of long service leave benefits for or in relation to the person under that law or under terms and conditions of employment determined under that law.

(2) In sub-section (1)—

- (a) “law of the Commonwealth or of an internal Territory” means a law of the Commonwealth or of an internal Territory that is in

force on the day on which this Act receives the Royal Assent or that comes into force on or after that date; and

- (b) “long service leave benefits” means any benefits of the kind provided under section 16 and 17.

23. (1) Where the approving authority, after consideration of all the circumstances, directs that, for the purposes of this Act, the death of an employee whose period of service is at least 1 year is to be presumed to have occurred on a specified date, this Act applies in relation to the employee as if he had died on that date.

Additional provisions relating to death of an employee.

(2) Where there are 2 or more dependants of a deceased employee, the approving authority shall, in exercising the powers conferred on it by sub-section 16(7) or 17(5), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the employee.

(3) Where an employee dies—

- (a) the approving authority may, if it has not authorized a payment or payments under sub-section 16(7) or 17(5), whichever is applicable, authorize payment of an amount equal to the amount referred to in whichever of those sub-sections is applicable to the legal personal representative of the employee; and
- (b) the approving authority shall, if it has not authorized a payment to a dependant, or payments to dependants, of the employee or a payment to the legal personal representative of the employee, of an amount equal to the amount referred to in sub-section 16(7) or 17(5), whichever is applicable, within 12 months after the death of the employee or, if the approving authority gave a direction in relation to the employee under sub-section (1), the date on which it gave that direction, authorize payment of that amount to the legal personal representative of the employee.

(4) Where an amount is payable under this Act to a person, being an employee or a dependant of an employee, who is under a legal disability, the approving authority may, instead of authorizing payment of the amount to the person, authorize payment of the amount to such trustee or trustees as the approving authority appoints to be held by that trustee or those trustees upon such trusts for the benefit of the person as the approving authority directs and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for the purposes of this Act, other than this section, be deemed to have been paid to the person.

(5) Where, upon the death of an employee, the amount payable under this Act in relation to his death would be *bona vacantia*, this Act does not authorize that amount to be paid in relation to the employee and, if the amount is payable by a public authority of the Commonwealth, the authority shall pay the amount to the Commonwealth.

Transitional  
provision.

24. (1) Where an employee ceased to be an employee on or after 1 January 1973 and before the commencement of this Act and the amount that the approving authority could have authorized to be paid to or in relation to him under this Act upon his ceasing to be such an employee if this Act and the *Public Service Amendment Act 1976* had come into operation on that first-mentioned date exceeds the amount (if any) or the sum of the amounts (if any) that have been authorized or are authorized to be paid to or in relation to him under whichever of the relevant provisions were applicable to the employee—

- (a) if the employee ceased to be an employee by reason of his death—
  - (i) the approving authority may authorize payment to a dependant of the employee of an amount equal to, or payment to 2 or more dependants of the employee of amounts aggregating, the excess;
  - (ii) if the approving authority has not authorized a payment to a dependant, or payments to dependants, under sub-paragraph (i), the approving authority may authorize payment of an amount equal to the excess to the legal personal representative of the employee; and
  - (iii) if the approving authority has not authorized any payment under sub-paragraph (i) or (ii) within 12 months after the commencement of this Act or, if it has been directed that the death of the employee is to be presumed to have occurred, within 12 months after the date on which that direction was given, the approving authority shall authorize payment of an amount equal to the excess to the legal personal representative of the employee;
- (b) if the employee has died after ceasing to be an employee—the approving authority shall authorize payment of an amount equal to the excess to the legal personal representative of the employee; or
- (c) in any other case—the approving authority shall authorize payment of an amount equal to the excess to the employee.

(2) Where there are 2 or more dependants of a deceased employee in relation to whom paragraph (1) (a) applies, the approving authority shall, in exercising the power conferred on it by sub-paragraph (1) (a) (i), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the employee.

(3) In sub-section (1), a reference to the relevant provisions is a reference to any of the following provisions:—

- (a) sections 7 and 8 of the *Commonwealth Employees' Furlough Act 1943*;
- (b) sections 54C, 73, 74, 75A, 81K and 81V of the *Public Service Act 1922*; and

(c) section 14 of the *Statistics (Arrangements with States) Act* 1956.

**25.** Section 10 of the *Meat Inspection Arrangements Act* 1964 is repealed. Conse-  
quential  
amendment.

**26.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act. Regulations.

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#### NOTE

1. Act No. 192, 1976; assented to 20 December 1976.