

Authorised Version No. 042
Long Service Leave Act 1992

No. 83 of 1992

Authorised Version incorporating amendments as at
1 July 2015

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY MATTERS

1 Purpose¹

The purpose of this Act is to make provision with respect to the long service leave entitlements of certain employees.

S. 1
substituted by
No. 59/1996
s. 9(Sch. 1
item 2).

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

* * * * *

S. 3
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 1),
repealed by
No. 59/1996
s. 9(Sch. 1
item 3).

4 Definitions

In this Act—

* * * * *

S. 4 def. of
award
repealed by
No. 82/1994
s. 5(2)(Sch. 1
item 2).

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S. 4 def. of
business day
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(a)).

* * * * *

S. 4 def. of
*Chief
Administrator*
amended by
No. 23/2005
s. 4(a).

Chief Administrator means the Secretary to the
Department of Innovation, Industry and
Regional Development;

S. 4 defs of
*Chief
Commission
Administration
Officer,
Commission,
employee,
employer*
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(b)).

* * * * *

S. 4 def. of
*Common-
wealth Fair
Work Act*
inserted by
No. 24/2009
s. 9(c).

Commonwealth Fair Work Act means the Fair
Work Act 2009 of the Commonwealth;

S. 4 def. of
*employment
agreement*
substituted by
No. 23/2005
s. 4(b),
amended by
No. 56/2006
s. 6(1),
substituted by
No. 24/2009
s. 9(a).

employment agreement means the agreement
(whether written or oral) under which an
employee is employed and includes—
(a) a federal agreement;
(b) any terms and conditions of
employment to which an employee is
entitled under—
(i) any federal award;
(ii) any federal determination;
(iii) any federal wage setting
instrument;

Fair Work Transition Act means the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth;

S. 4 def. of *Fair Work Transition Act* inserted by No. 24/2009 s. 9(c).

federal agreement means—

S. 4 def. of *federal agreement* inserted by No. 24/2009 s. 9(c).

- (a) a certified agreement or an Australian Workplace Agreement made under the Workplace Relations Act 1996 of the Commonwealth, as in force immediately before 27 March 2006; or
- (b) a workplace agreement within the meaning of the Workplace Relations Act 1996 of the Commonwealth (as in force before the WR Act repeal day);
- (c) any—
 - (i) pre-reform certified agreement; or
 - (ii) Australian Workplace Agreement; or
 - (iii) pre-reform Australian Workplace Agreement; or
 - (iv) workplace agreement; or
 - (v) Individual Transitional Employment Agreement—
that is a transitional instrument that continues in existence or is made under the Fair Work Transition Act;
- (d) any enterprise agreement within the meaning of the Commonwealth Fair Work Act;

S. 4 def. of
federal award
inserted by
No. 24/2009
s. 9(c).

federal award means—

- (a) an award made under the Workplace Relations Act 1996 of the Commonwealth (as in force before the WR Act repeal day);
- (b) an award that is a transitional instrument that continues in existence under the Fair Work Transition Act;
- (c) a transitional award or common rule that continues in existence under the Fair Work Transition Act;
- (d) any other award-based transitional instrument under the Fair Work Transition Act;
- (e) any award, that is taken to be a modern award under the Fair Work Transition Act;
- (f) any other modern award, within the meaning of the Commonwealth Fair Work Act;

S. 4 defs of
Federal Commission,
industrial action,
industrial authority,
industrial dispute,
industrial matter
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(c)).

* * * * *

S. 4 def. of
federal determination
inserted by
No. 24/2009
s. 9(c).

federal determination means—

- (a) any workplace determination that continues in existence under the Fair Work Transition Act;

(b) any workplace determination within the meaning of the Commonwealth Fair Work Act;

federal wage setting instrument means—

- (a) any transitional minimum wage instrument that continues in existence under the Fair Work Transition Act;
- (b) any national minimum wage order within the meaning of the Commonwealth Fair Work Act;

S. 4 def. of *federal wage setting instrument* inserted by No. 24/2009 s. 9(c).

* * * * *

S. 4 def. of *industry* repealed by No. 59/1996 s. 9(Sch. 1 item 4(d)).

* * * * *

S. 4 def. of *medical practitioner* repealed by No. 23/1994 s. 118(Sch. 1 item 19.1(a)).

organisation means—

- (a) an organisation of employees;
- (b) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or a Territory of the Commonwealth;
- (c) an association of employees, a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment;

S. 4 def. of *organisation* inserted by No. 56/2006 s. 6(2), substituted by No. 24/2009 s. 9(b).

other Act includes an Act of the Commonwealth and of any State or Territory;

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S. 4 defs of
panel,
President,
public body,
*recognised
association*
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(e)).

* * * * *

records includes any registers, certificates,
notices, pay sheets and other documents;

S. 4 def. of
*registered
medical
practitioner*
inserted by
No. 23/1994
s. 118(Sch. 1
item 19.1(b)),
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(f)).

* * * * *

S. 4 defs of
shop,
trade union,
workplace
repealed by
No. 59/1996
s. 9(Sch. 1
item 4(f)).

* * * * *

S. 4 def. of
*WR Act repeal
day*
inserted by
No. 24/2009
s. 9(c).

WR Act repeal day has the same meaning as in
the Fair Work Transition Act.

S. 5
repealed by
No. 59/1996
s. 9(Sch. 1
item 5).

* * * * *

6 Act binds the Crown

This Act binds the Crown in right of the State of Victoria, and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

7 Application of Act

(1) This Act applies to—

(a) a person appointed under Division 5, 6, 7 or 8 of Part 3 of the **Victoria Police Act 2013**; and

(b) a person appointed as a police reservist under section 103 of the **Police Regulation Act 1958** as in force immediately before the commencement of section 282 of the **Victoria Police Act 2013**.

* * * * *

S. 7(1)
substituted by
No. 37/2014
s. 10(Sch.
item 100).

S. 7(2)
repealed by
No. 59/1996
s. 9(Sch. 1
item 6).

(3) A person or body, corporate or unincorporate, nominated by the Governor in Council as the employer of a person referred to in subsection (1) must be taken to be that person's employer for the purposes of this Act. The nominated employer may nominate a representative who must be taken to be the employer's representative for the purposes of this Act.

(4) Subject to section 83 of the **Public Sector Management Act 1992**, this Act also applies to officers and employees and Ministerial officers and Parliamentary advisers and judicial employees within the meaning of that Act and to any person not covered by a federal award who holds a position on the staff of a declared authority within the meaning of that Act.

S. 7(4)
inserted by
No. 68/1992
s. 111,
amended by
Nos 97/1993
s. 43(1),
24/1996
s. 33(1)(2).

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S. 7(4A)
inserted by
No. 24/1996
s. 33(3),
repealed by
No. 20/2005
s. 37.

* * * * *

S. 7(5)
inserted by
No. 68/1992
s. 111,
amended by
Nos 97/1993
s. 43(2),
24/1996
s. 33(4).

(5) A person or body, corporate or unincorporate, nominated by the Governor in Council as the employer of a person referred to in subsection (4) or (4A) (not being an executive officer under a contract of employment within the meaning of Part 4 of the **Public Sector Management Act 1992**) must be taken to be that person's employer for the purposes of this Act. The nominated employer may nominate a representative who must be taken to be the employer's representative for the purposes of this Act.

Pt 2 (ss 8–19)² (see Note 2).

Pt 3 (ss 20–35)³ (see Note 3).

Pt 4 (ss 36–37)⁴ (see Note 4).

**PART 5—PROVISIONS CONCERNING SPECIFIC
INDUSTRIAL MATTERS**

Pt 5, Div. 1 (ss 38–42)⁵ (see Note 5).

Pt 5, Div. 2 (ss 43, 44)⁶ (see Note 6).

Pt 5, Div. 3 (ss 45–50)⁷ (see Note 7).

Pt 5, Div. 4 (ss 51, 52)⁸ (see Note 8).

Pt 5, Div. 5 (ss 53–55)⁹ (see Note 9).

Division 6—Long service leave

56 Basic entitlement to long service leave

An employee is entitled to—

- (a) 13 weeks of long service leave on ordinary pay on completing 15 years of continuous employment with one employer; and
- (b) 4 1/3 weeks of long service leave on ordinary pay on completing each period of 5 years of continuous employment with that employer after the first 15 years of continuous employment with that employer.

56A Entitlement to long service leave after 10 years

- (1) If an employee has completed at least 10, but less than 15, years of continuous employment with one employer, the employee is entitled to an amount of long service leave equal to 1/60th of the period of continuous employment with that employer.
- (2) For the purposes of working out when an employee becomes entitled to long service leave under this section, only 2/3rds of the employee's continuous employment completed before the commencement of this section counts as continuous employment.

S. 56A
inserted by
No. 23/2005
s. 5.

57 Additional entitlement to long service leave if employment stops after 15 years

- (1) This section only applies if an employee stops working for an employer after completing 15 years of continuous employment with that employer.
- (2) The employee is entitled to an amount of long service leave equal to 1/60th of the period of his or her continuous employment with that employer since he or she last became entitled to long service leave under section 56.
- (3) The period of an employee's long service leave that relates to a period of employment before 1 January 1965 and that had not been taken before the commencement of this Division is to be reduced by one quarter.

S. 58
(Heading)
inserted by
No. 23/2005
s. 6(1).

58 Entitlement to long service leave if employment stops after 7 years

S. 58(1)
substituted by
No. 23/2005
s. 6(2).

- (1) This section only applies if an employee's employment is ended and the employee has completed at least 7, but less than 15, years of continuous employment with one employer.
- (2) The employee is entitled to an amount of long service leave equal to 1/60th of the period of his or her continuous employment.

59 Definition of *employer* and *employee*

In this Division—

S. 59 def. of
employee
substituted by
No. 23/2005
s. 7.

employee means a person employed by an employer to do any work for hire or reward, and includes—

- (a) an apprentice and any person whose contract of employment requires him or her to learn or to be taught any occupation; and
- (b) a casual or seasonal employee;

employer includes, in relation to a transfer referred to in section 60, a person who was not an employer at the time of the transfer.

60 Meaning of one employer

- (1) This section sets out several situations in which an employee is to be regarded, for the purposes of this Division, as having been employed by the one employer, even though the employee may have worked over the relevant period of time for more than one employer in a strict legal sense.
- (2) If an employee is employed by a corporation, he or she is to be regarded as having been employed by that corporation during any period that—
 - (a) he or she was employed by a related body corporate of that corporation (within the meaning of the Corporations Act); or
 - (b) he or she was employed by another corporation and—
 - (i) the directors of that other corporation and the employee's present employer were substantially the same; or
 - (ii) that other corporation and the employee's present employer were under substantially the same management.
- (3) If the ownership of a business employing someone changes but the employment of the employee continues, the employee is to be regarded as

S. 60(2)(a)
substituted by
No. 44/2001
s. 3(Sch.
item 75).

having started employment with the new owner on the date on which the employee started his or her employment at that business.

- (4) Subsection (3) applies regardless of whether the change occurred before or after the commencement of this Division.
- (5) If an employee was dismissed from employment by the owner of a business, but the ownership of the business changes and the new owner employs the employee within 3 months after the dismissal, the employee is to be regarded as—
 - (a) having finished employment with the former owner on the day before the ownership of the business changed; and
 - (b) having started employment with the new owner on the day the ownership changed; and
 - (c) having been employed by the new owner from the date on which the employee first started employment at that business.
- (6) If an employee performs duties in connection with any assets used in the carrying on of a business of his or her employer and those assets are transferred to another employer who continues the employment of the employee, the employee is to be regarded as having started employment with the new owner on the date on which the employee started his or her employment at that business.
- (7) Subsection (8) only applies if an employee performs duties in connection with any assets used in the carrying on of a business of an employer and—
 - (a) the employee is dismissed by that employer; and

- (b) those assets are transferred to another employer; and
 - (c) the other employer employs the employee within 3 months after the date of the dismissal to perform duties in relation to those assets, or other assets of a similar kind.
- (8) If this subsection applies, the employee is to be regarded as—
- (a) having finished employment with his or her former employer on the day before the assets were transferred; and
 - (b) having started employment with the new employer on the day the assets were transferred; and
 - (c) having been employed by the new employer from the date on which the employee first started employment at that business.
- (9) Subsections (5), (6) and (8) do not apply if the transfer or change of ownership occurred before 11 October 1984.
- (10) In this section—
- assets* includes land, plant and equipment;
- business* includes a trade, process or occupation and any part of a trade, process or occupation and also includes any part of a business;
- transfer* includes a transmission, conveyance, assignment or succession, whether by agreement or by operation of law.

61 Employer may apply to reverse the effect of section 60(5) and (8)

- (1) A new owner or employer referred to in section 60(5) and (8) may apply to the Industrial Division of the Magistrates' Court for a declaration that one or other of those sections does not apply to the

S. 61(1)
amended by
No. 59/1996
s. 9(Sch. 1
item 8(a)).

employment of an employee or of a class of employee.

S. 61(2)
amended by
No. 59/1996
s. 9(Sch. 1
item 8(a)).

- (2) The Industrial Division of the Magistrates' Court may make such a declaration if the employer satisfies it that the employment of the employee, or the class of employee, was not related to the change of ownership or transfer of assets (as the case may be).
- (3) Section 60(5) or (8) does not apply to the employment of an employee, or of a class of employee, in respect of whom such a declaration is made.

62 Meaning of *continuous employment*

- (1) This section sets out several situations in which an employee is to be regarded, for the purposes of this Division, as having been continuously employed even though in a strict legal sense it could be said that the employee's employment was interrupted.
- (2) An employee's employment is to be regarded as being continuous despite—
 - (a) the taking of any annual leave or long service leave;
 - (b) any absence from work on account of illness or injury;
 - (c) any other absence from work approved by his or her employer (paid or unpaid), including carer's leave but not including adoption, maternity or paternity leave;
- (ca) the taking of any period of adoption, maternity or paternity leave (paid or unpaid), not exceeding—
 - (i) 12 months; or

S. 62(2)(c)
substituted by
No. 23/2005
s. 8(1).

S. 62(2)(ca)
inserted by
No. 23/2005
s. 8(1),
substituted by
No. 24/2009
s. 10.

- (ii) any longer period—
 - (A) specified in the employee's employment agreement; or
 - (B) to which the employee is entitled under Division 6 of Part 7 of the Workplace Relations Act 1996 of the Commonwealth, as continued in force under the Fair Work Transition Act; or
 - (C) to which the employee is entitled under the National Employment Standards within the meaning of the Commonwealth Fair Work Act;
- (d) any interruption or ending of the employment by the employer if the interruption or ending is made with the intention of avoiding obligations in respect of long service leave or annual leave;
- (e) in the case of an employee performing duties in relation to assets of a particular kind, any absence from work arising solely because of a transfer to which section 60(6) applies of those assets from one employer to another employer;
- (f) any interruption arising directly or indirectly from an industrial dispute;
- (g) the dismissal of the employee, but only if he or she is re-employed within a period not exceeding 3 months after his or her dismissal;
- (h) the standing-down of the employee on account of slackness of trade;

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S. 62(2)(i)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 13),
repealed by
No. 23/2005
s. 8(2).

* * * * *

S. 62(2)(j)
repealed by
No. 23/2005
s. 8(2).

* * * * *

- (3) If the employment of an employee who was apprenticed to an employer is continued by the employer within 12 months after the completion of the apprenticeship, the period of the apprenticeship is to be counted as part of the continuous employment of the employee with that employer.
- (4) Subsection (3) applies regardless of whether the continuation occurred before or after the commencement of this Division.
- (5) For the purposes of this Division, the continuous employment by an employer of an employee who is employed by the employer at the commencement of this Division is to be regarded as starting at the actual day (before the commencement of this Division) of that employment.

S. 62A
inserted by
No. 23/2005
s. 9.

62A Meaning of *continuous employment* for casual and seasonal employees

- (1) Without limiting section 62, the employment of an employee who is employed by the same employer more than once over a period is to be regarded as continuous if—

- (a) there is no more than an absence of 3 months between each instance of employment in the period; or
 - (b) there is more than an absence of 3 months between two particular instances of employment, but the length of the absence is due to the terms of the engagement of the employee by the employer.
- (2) Without limiting section 62, the employment of an employee who is employed by the same employer more than once over a period is to be regarded as continuous if the absences between instances of employment are due to the seasonal nature of the employee's employment.
- (3) Subsections (1) and (2) apply even if—
- (a) any of the employment is not full-time; or
 - (b) the employee is employed by the employer under 2 or more employment agreements; or
 - (c) the employee has engaged in other employment during the period.

63 Whether interruptions are to be included in the period of employment

- (1) The absences from work referred to in section 62(2)(a), (d) and (e) are to be counted as part of the period of an employee's employment.
- (2) Any absence from work of not more than 48 weeks in any year on account of illness or injury is to be counted as part of the period of an employee's employment, but any absence for that reason in excess of that period is not to be counted.
- (3) Any absence from work referred to in section 62(2)(c) is to be counted as part of the period of an employee's employment unless—

**S. 63(3)
substituted by
No. 23/2005
s. 10(1).**

S. 63(4)
amended by
No. 23/2005
s. 10(2).

- (a) on it being approved, it was agreed in writing between the employee and the employer (at the request of the employee) that it not be counted; or
 - (b) it is unpaid adoption, maternity or paternity leave.
- (4) The absences from work referred to in section 62(2)(f), (g) and (h) are not to be counted as part of the period of an employee's employment.
 - (5) In computing long service leave under this Division, any long service leave (or payment in lieu of long service leave) granted to an employee in respect of any period of employment which is under this section, or under section 61 or 62, to be taken into account in computing the employee's entitlement to long service leave under this Division is to be taken into account and regarded as having been leave taken under this Division.

64 Meaning of *ordinary pay*

S. 64(3)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 14),
substituted by
No. 23/2005
s. 11(1).

- (1) For the purposes of this Division, *ordinary pay* means the pay an employee is entitled to receive at the time he or she takes long service leave for working his or her normal weekly hours at his or her ordinary time rate of pay.
- (2) Ordinary pay includes the cash value of any board or lodging that the employee receives from his or her employer.
- (3) If no ordinary time rate of pay is fixed for an employee's work under the relevant employment agreement, the employee's ordinary time rate of pay is to be taken to be the greater of the following—
 - (a) the average weekly rate earned by the employee in the 12 months immediately before he or she takes long service leave;

(b) the average weekly rate earned by the employee in the 5 years immediately before he or she takes long service leave.

(4) If—

(a) no normal weekly number of hours of work is fixed for an employee's work under the relevant employment agreement; or

(b) the normal weekly number of hours is fixed but is changed one or more times during the 12 months immediately before the employee takes long service leave—

the employee's normal weekly number of hours of work is to be taken to be the greater of the following—

(c) the average weekly number of hours worked by the employee in the 12 months immediately before he or she takes long service leave;

(d) the average weekly number of hours worked by the employee in the 5 years immediately before he or she takes long service leave.

(5) If an employee defers the taking of his or her long service leave under a written agreement with his or her employer made at the request of the employee, the ordinary time rate of pay that is to be used in calculating the employee's ordinary pay for the time he or she is on leave is to be the rate agreed on in the agreement.

(6) The rate agreed on in such an agreement must not be less than the rate to which the employee is entitled on the date the entitlement to the leave arises and any provision to the contrary in an agreement is of no effect.

S. 64(4)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 15),
substituted by
No. 23/2005
s. 11(1).

S. 64(7)
inserted by
No. 23/2005
s. 11(2).

(7) If an employee is—

S. 64(7)(a)
substituted by
No. 9/2010
s. 139,
amended by
No. 67/2013
s. 649(Sch. 9
item 23).

(a) working in suitable employment (within the meaning of section 3 of the **Workplace Injury Rehabilitation and Compensation Act 2013**); or

S. 64(7)(b)
substituted by
No. 9/2010
s. 139.

(b) absent from work because of a workplace illness or injury and in receipt of any compensation in the form of weekly payments from the Authority for that illness or injury—

his or her normal weekly hours and ordinary time rate of pay are to be taken to be the greater of the following—

- (c) the employee's normal weekly hours and ordinary time rate of pay immediately before he or she takes long service leave;
- (d) the employee's normal weekly hours and ordinary time rate of pay immediately before he or she developed the relevant illness or suffered the relevant injury.

65 Employees to whom this Division does not apply

(1) This Division does not apply to any employee who—

S. 65(1)(b)
amended by
Nos 82/1994
s. 5(2)(Sch. 1
item 16),
59/1996
s. 9(Sch. 1
item 8(b)).

- (a) is entitled to long service leave under any Act other than this Act; or
- (b) is in a class of employees who are entitled to long service leave under an employment agreement (regardless of whether it was made before or after the commencement of this Division) on a basis that, in the opinion of the Industrial Division of the Magistrates'

- Court, is more favourable than that provided by this Division; or
- (c) is employed by an employer who is exempted under this section from complying with this Division in respect of him or her.
- (2) An employer may apply to the Industrial Division of the Magistrates' Court to be exempted from complying with this Division in respect of all or any, or any class of, employees. **S. 65(2) amended by No. 59/1996 s. 9(Sch. 1 item 8(b)).**
- (3) The Industrial Division of the Magistrates' Court may grant such an application if it is satisfied—
- (a) that the employees in respect of whom the application is made are entitled under their terms and conditions of employment, on a basis no less favourable than that prescribed by this Division—
- (i) to long service leave;
- (ii) (whether or not solely at the cost to the employer, but at a cost to the employer that is no less than the cost involved in providing long service leave under this Division) to superannuation benefits or to superannuation benefits and long service leave; and
- (b) that the entitlement better serves the interests of the employees than the entitlement provided by this Division.
- (4) The Industrial Division of the Magistrates' Court may grant the application subject to conditions and may at any time impose conditions or further conditions on the grant. **S. 65(4) amended by No. 59/1996 s. 9(Sch. 1 item 8(b)).**
- (5) The Industrial Division of the Magistrates' Court may revoke an exemption at any time. **S. 65(5) amended by No. 59/1996 s. 9(Sch. 1 item 8(b)).**

S. 66
amended by
No. 59/1996
s. 9(Sch. 1
item 8(c)),
substituted by
No. 23/2005
s. 12.

66 When leave is to be taken

- (1) An employer and an employee who is entitled to long service leave under this Act may agree when the employee is to take the leave.
- (2) In the absence of an agreement under subsection (1), the employer may direct the employee to take long service leave at a particular time by giving the employee at least 3 months' written notice.
- (3) Subject to subsection (4), an employee who receives a notice from an employer under subsection (2) must take the leave as directed by the employer.
- (4) The employee may apply to the Industrial Division of the Magistrates' Court for an order concerning the taking of long service leave—
 - (a) if the employee and the employer cannot agree under subsection (1); or
 - (b) if the employee receives a notice from the employer under subsection (2).
- (5) In determining an application under subsection (4), the Court may take into account all of the relevant circumstances, including the needs of the employee and the needs of the employer's business.

67 Leave period may be split

- (1) Long service leave must be taken in one period.
- (2) However, if an employer and an employee agree, an employee—
 - (a) may take the first 13 weeks of long service leave to which he or she is entitled in 2 or 3 separate periods; and

- (b) may take any further long service leave to which he or she becomes entitled in 2 separate periods.

68 Payment while on leave

- (1) An employer must give an employee the pay to which the employee is entitled in respect of long service leave in one of the following ways—
- (a) in full when the employee starts his or her leave; or
 - (b) at the same time as the employee would receive the pay if the employee were still at work; or
 - (c) in any other way agreed between the employee and the employer.
- (2) If the method set out in subsection (1)(b) is used, the employer must send each payment by cheque to a specified address, if asked to do so by the employee in writing.

S. 68(2)
amended by
No. 23/2005
s. 13.

Penalty: 20 penalty units.

69 Pay increases while on leave

- (1) If the ordinary pay of an employee who is on long service leave increases while the employee is taking the leave, he or she is entitled to be paid the increased rate from the time of the increase.
- (2) If the employee was paid in full at the start of the leave or was paid in advance with respect to any period of leave, the employer must pay the additional amount resulting from the increase as soon as the employee returns to work.

S. 69(2)
amended by
No. 23/2005
s. 13.

Penalty: 20 penalty units.

S. 70
substituted by
No. 23/2005
s. 14.

70 Long service leave to be exclusive of annual leave and public holidays

Long service leave does not include any public holiday or annual leave occurring during the period when the long service leave is taken.

71 Leave in advance

- (1) An employer may grant an employee long service leave before the employee becomes entitled to that leave.
- (2) If an employer does this and the employee takes the leave, the employee is not entitled to any further long service leave or payment in lieu of long service leave for the period of employment in respect of which the leave in advance was granted.
- (3) If the employment of an employee who has taken leave in advance ends, the employer may deduct from any payment payable to the employee as a result of the ending of his or her employment an amount equal to the amount paid to the employee for the leave (if any) in respect of which the employee will not become entitled.

S. 71A
inserted by
No. 23/2005
s. 15.

71A Leave at half pay

- (1) An employee may request his or her employer to grant the employee an amount of long service leave—
 - (a) twice as long as the amount to which the employee would otherwise be entitled; and
 - (b) at a rate of pay equal to half the employee's ordinary pay.
- (2) An employer must grant a request made under subsection (1) if it is reasonable to do so having regard to the needs of the employee and the needs of the employer's business.

72 What is to happen if employment ends before leave taken

- (1) If the employment of an employee ends before he or she has taken all the long service leave to which he or she is entitled, the employee is to be regarded as having started to take his or her leave on the day the employment ended.
- (2) On that day the employee's employer must pay the employee the full amount of the employee's long service leave entitlement as at that day.

Penalty: 20 penalty units.
- (3) An employee's long service leave entitlement under this section includes any entitlement that accrued as a result of the ending of the employee's employment.

S. 72(2)
amended by
No. 23/2005
s. 16.

73 What is to happen if the employee dies before leave is taken

- (1) If an employee dies before taking all the long service leave to which he or she is entitled, the employee's employer must pay to the employee's personal representative the full amount of the long service leave entitlement still owed to the employee (if any).

Penalty: 20 penalty units.
- (2) An employee's long service leave entitlement under this section includes any entitlement that accrued as a result of the employee's death ending the employee's employment.
- (3) For the purposes of calculating the amount to be paid under this section—
 - (a) the ordinary pay of the employee is the amount the employee was entitled to receive as at the time of his or her death for working his or her normal weekly hours at his or her ordinary rate of pay;

S. 73(1)
amended by
No. 23/2005
s. 16.

- (b) any average that needs to be taken for the purposes of section 64 is to be taken over the 12 months immediately before the employee's death.

74 Payments in lieu forbidden

- (1) An employer must not give an employee a payment in lieu of long service leave, or in lieu of any part of long service leave, except as permitted by this Division.
- (2) An employee must not accept any payment in lieu of long service leave, or in lieu of any part of long service leave, except as permitted by this Division.

S. 74(2)
amended by
No. 23/2005
s. 16.

Penalty: 20 penalty units.

75 Settlement of disputes concerning leave

- (1) The Industrial Division of the Magistrates' Court has jurisdiction to hear any dispute as to—
 - (a) whether or when an employee or an employee's personal representative is or has become entitled to long service leave or a payment in lieu of long service leave; or
 - (b) the rate of ordinary pay of an employee for the purposes of this Division; or
 - (c) a refusal by an employer to grant a request made by an employee under section 71A(1).
- (2) An employee or a personal representative of an employee may apply to the Industrial Division of the Magistrates' Court for an order directing an employer to pay to the employee or the representative any amount that has become due to the employee or the representative under this Division within the 5 years immediately before the day on which the application is made.

S. 75(1)(b)
amended by
No. 23/2005
s. 17(a).

S. 75(1)(c)
inserted by
No. 23/2005
s. 17(b).

- (3) The Court may make such an order and may award costs to any party to the application and assess the amount of those costs.

* * * * *

Ss 76, 77
repealed by
No. 59/1996
s. 9(Sch. 1
item 8(d)).

78 Offences concerning leave

- (1) An employee must not work for hire or reward while he or she is taking long service leave.
- (2) A person must not knowingly employ another person for hire or reward while that other person is taking long service leave.

S. 78(2)
amended by
No. 23/2005
s. 18.

Penalty: 5 penalty units.

79 Contracting out prohibited

- (1) Unless expressly allowed by this Division, any provision in any employment agreement that annuls, varies or excludes any provision of this Division is of no effect, regardless of when the agreement was made.
- (2) This section does not affect any provision of an employment agreement that confers greater rights on an employee than those conferred by this Division.
- (3) In this section, *employment agreement* does not include—
- (a) a workplace agreement to which paragraph (c) of the definition of federal agreement applies;
 - (b) any terms and conditions of employment to which an employee is entitled under an award to which paragraph (b), (c) or (d) of the definition of federal award applies.

S. 79(1)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 17).

S. 79(2)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 18).

S. 79(3)
inserted by
No. 23/2005
s. 19,
amended by
No. 56/2006
s. 6(3),
substituted by
No. 24/2009
s. 11.

80 Records

S. 80(1)
amended by
Nos 59/1996
s. 9(Sch. 1
item 8(e)(i)(ii)),
23/2005 s. 20.

- (1) An employer must keep long service leave records in the form approved by the Chief Administrator and containing the details required by him or her.

Penalty: 20 penalty units.

S. 80(2)
amended by
No. 23/2005
s. 20.

- (2) An employer must retain a long service leave record for at least 7 years after the employee to whom the record relates dies or stops working for the employer.

Penalty: 20 penalty units.

S. 80(3)
amended by
No. 23/2005
s. 20.

- (3) A person must not make any false or misleading statement in, or any material omission from, a long service leave record made under this section.

Penalty: 20 penalty units.

- (4) It is a defence to a charge under subsection (3) if the person charged proves to the satisfaction of the Court that the statement or omission complained of resulted from a genuine error.

S. 80(5)
amended by
No. 68/2009
s. 97(Sch.
item 81.1).

- (5) Despite anything to the contrary in this or in any other Act, a charge-sheet charging an offence under this section may be filed at any time within 5 years after the commission of the alleged offence.

81 Money due to employee to be treated as arrears of pay

Any amount owed under this Division by an employer to an employee or his or her personal representative is to be regarded for the purposes of this Act as arrears of pay.

**PART 6—PRESERVATION OF SUPERIOR LONG SERVICE
LEAVE ENTITLEMENTS**

Pt 6 (ss 82–89)
repealed¹⁰,
new Pt 6
(Heading and
ss 82–84)
inserted by
No. 56/2006
s. 4.

82 Application of Part

This Part applies despite anything to the contrary
in this Act.

New s. 82
inserted by
No. 56/2006
s. 4.

83 Definition of award

In this Part—

award—

New s. 83
inserted by
No. 56/2006
s. 4.

- (a) has the same meaning as it had in the Workplace Relations Act 1996 of the Commonwealth as in force immediately before 27 March 2006; and
- (b) includes a term of an award that was a common rule in Victoria under section 141, 142 or 493A of the Workplace Relations Act 1996 of the Commonwealth as in force immediately before 27 March 2006; and
- (c) in relation to an employee and his or her employer, means an award—
 - (i) that was binding on the employer immediately before 27 March 2006 or would have been binding had the employer been an employer in the relevant industry at that time; and

- (ii) to which the employee's employment was subject immediately before 27 March 2006 or would have been subject had the employee been employed by the employer at that time.

New s. 84
inserted by
No. 56/2006
s. 4.

84 Preservation

- (1) If, immediately before 27 March 2006, an award provided a long service leave entitlement that was more beneficial to an employee in any respect than the entitlement provided in Part 5, the employee is entitled under this Act to that superior entitlement instead of his or her entitlement under Part 5.
- (2) Subsection (1) applies to an employee whether or not he or she was employed immediately before 27 March 2006.
-

**PART 7—PRESERVATION OF ACCRUED LONG SERVICE
LEAVE ENTITLEMENTS**

Pt 7 (ss 90–97)
repealed¹,
new Pt 7
(Heading and
ss 85, 86)
inserted by
No. 56/2006
s. 4.

85 Definitions for this Part

New s. 85
inserted by
No. 56/2006
s. 4.

In this Part—

award has the same meaning as it has in Part 6;

protected accrued long service leave entitlement
in relation to an employee means an
entitlement to long service leave—

- (a) that accrued by operation of an award that has subsequently been varied, set aside, ceased to have effect or was revoked under Part 10 of the Workplace Relations Act 1996 of the Commonwealth;
- (b) that accrued by operation of an award that is no longer applicable to that employee under Division 5 of Part 11 of the Workplace Relations Act 1996 of the Commonwealth;
- (c) that accrued by operation of an employment agreement that has subsequently been terminated under—
 - (i) Division 9 of Part 8 of the Workplace Relations Act 1996 of the Commonwealth;
 - (ii) section 170MH of the Workplace Relations Act 1996 of the Commonwealth as continued in operation by clause 2(1)(k) of Schedule 7 to that Act;

- (d) that accrued by operation of an agreement that is no longer applicable to that employee under Divisions 3 or 4 of Part 11 of the Workplace Relations Act 1996 of the Commonwealth.

New s. 86
inserted by
No. 56/2006
s. 4.

86 Protection of accrued entitlements

An employee who is or was at any time entitled to a protected accrued long service leave entitlement is entitled to the benefit of that entitlement under this Act regardless of the status of the award or agreement under which that entitlement accrued.

**PART 8—DISCLOSURE REQUIREMENTS FOR
WORKPLACE AGREEMENTS**

Pt 8 (ss 98–101) repealed¹², new Pt 8 (Heading and ss 87, 88) inserted by No. 56/2006 s. 5.

87 Disclosure of unfair long service leave entitlements

New s. 87 inserted by No. 56/2006 s. 5.

- (1) At least 7 days before entering into an employment agreement that would modify or remove an employee's entitlements under this Act, the employer must notify the employee in writing of the modification or removal (as the case may be).
- (2) For the purposes of subsection (1), the notice must state whether the proposed agreement modifies or removes any of the following entitlements under the Act—
 - (a) an entitlement to long service leave on completing 15 years of continuous service;
 - (b) an entitlement to long service leave where an employee has completed at least 10 but less than 15 years of continuous service;
 - (c) an additional entitlement to long service leave if employment stops after 15 years;
 - (d) an entitlement to long service leave if employment stops after 7 years but before 10 years;
 - (e) any entitlement arising from the operation of section 84 or 86.

New s. 88
inserted by
No. 56/2006
s. 5.

88 Civil penalty

- (1) If an employer contravenes section 87, the contravention is not an offence, however a court may make an order imposing a penalty of up to \$10 000 on the employer.
- (2) An application for an order under subsection (1) may be made—
 - (a) by the employee; or
 - (b) at the request of the employee, by an organisation of which the employee is a member, or eligible to be a member; or
 - (c) by the Minister.
- (3) A court that imposes a penalty under subsection (1) may order that the penalty, or a part of the penalty, be paid—
 - (a) to a particular person or organisation; or
 - (b) into the Consolidated Fund.
- (4) An order imposing a penalty under subsection (1) is taken, for the purposes of enforcement, to be an order made by the court in a civil proceeding.
- (5) In this section, *court* means the Industrial Division of the Magistrates' Court.

PART 9—EMPLOYMENT TERMINATED OR PREJUDICED

Pt 9
(ss 102–114)
repealed¹³,
new Pt 9
(Heading and
ss 89–93)
inserted by
No. 56/2006
s. 5.

89 Definition

In this Part, *court* means the Industrial Division of the Magistrates' Court.

New s. 89
inserted by
No. 56/2006
s. 5.

90 Employment not to be terminated or prejudiced for exercising rights under this Act

New s. 90
inserted by
No. 56/2006
s. 5.

An employer must not—

- (a) terminate or threaten to terminate the employment of an employee; or
- (b) alter the position of an employee to the employee's prejudice—

because the employee is entitled to or seeks to exercise any entitlement or other right under this Act.

91 Reversal of onus of proof in certain circumstances

New s. 91
inserted by
No. 56/2006
s. 5.

In proceedings for a contravention of section 90, if the employee proves that he or she—

- (a) took long service leave; or
- (b) applied for long service leave; or
- (c) otherwise communicated to the employer his or her intention to take long service leave—

the onus of proving that the termination, threat or prejudice was not actuated by the reason alleged by the employee lies on the employer.

New s. 92
inserted by
No. 56/2006
s. 5.

92 Civil penalty

- (1) If an employer contravenes section 90, the contravention is not an offence, however the court may make an order imposing a penalty of up to \$10 000 on the employer.
- (2) An application for an order under subsection (1) may be made—
 - (a) by the employee; or
 - (b) at the request of the employee, by an organisation of which the employee is a member, or eligible to be a member.
- (3) The court may order that the penalty, or a part of the penalty, be paid—
 - (a) to a particular person or organisation; or
 - (b) into the Consolidated Fund.
- (4) An order imposing a penalty under subsection (1) is taken, for the purposes of enforcement, to be an order made by the court in a civil proceeding.

New s. 93
inserted by
No. 56/2006
s. 5.

93 Reimbursement, reinstatement and compensation

- (1) If an employer is found to have contravened section 90, the court may—
 - (a) order the employer to pay the employee a specified sum by way of reimbursement for the remuneration lost by the employee; and
 - (b) subject to subsection (2), order that the employee be reinstated in his or her former position or a similar position.
- (2) If the court considers that it would be impracticable to reinstate the employee, the court may order the employer to pay the employee an amount of compensation not exceeding the amount of remuneration of the employee during

the 12 months immediately before the employee's employment was terminated.

- (3) An order under subsection (1)(a) or (2) must be taken to be a judgment debt due by the employer to the employee and may be enforced in the court accordingly.
- (4) The amount of remuneration that would have been payable to an employee in respect of any period that his or her employer fails to give effect to an order under subsection (1)(b) is recoverable as a debt due to the employee by the employer in any court of competent jurisdiction.

Pt 10 (ss 115–118)¹⁴ (see Note 14).

Pt 11 (ss 119–134)¹⁵ (see Note 15).

Pt 12 (ss 135–139)¹⁶ (see Note 16).

Pt 13 (ss 140–145)¹⁷ (see Note 17).

Pt 14 (ss 146–152)¹⁸ (see Note 18).

**PART 15—PROSECUTIONS, EVIDENCE AND RECOVERY
OF MONEY**

**153 Proceedings for offences to be brought in Industrial
Division of the Magistrates' Court**

- (1) If a person is charged with an offence against this Act, the charge must be heard, and all penalties recovered, before the Magistrates' Court sitting as the Industrial Division.
- (2) Despite anything to the contrary in any Act, the jurisdiction of the Industrial Division of the Magistrates' Court in relation to any matter referred to in subsection (1) is exclusive.
- (3) Nothing in this section deprives a person of any right that the person has under the **Criminal Procedure Act 2009**—

S. 153(3)
amended by
No. 68/2009
s. 97(Sch.
item 81.2(a)).

S. 153(3)(a)
amended by
No. 68/2009
s. 97(Sch.
item 81.2(b)).

- (a) to appeal to the County Court against any sentence imposed by the Industrial Division of the Magistrates' Court; or
- (b) to appeal to the Supreme Court, on a question of law, from a final order of the Industrial Division of the Magistrates' Court.

154 Who can prosecute under this Act?

- (1) A prosecution for an offence under this Act may only be brought by a person authorised by—
 - (a) the Minister; or
 - (b) the Chief Administrator, if the Minister has authorised the Chief Administrator to give such an authorisation; or

- (c) an officer of the Department of Innovation, Industry and Regional Development who the Minister has authorised to give such an authorisation. **S. 154(1)(c) amended by No. 23/2005 s. 21.**
- (2) Any authorisation—
- (a) must be in writing; and
- (b) may be given generally, or only in relation to a particular case or cases, or a particular class of case or cases; and
- (c) may be revoked by the person who gave it at any time by notice in writing.
- (3) The revocation of an authorisation does not affect any proceedings started by a person before that person's authorisation was revoked unless the notice of revocation states otherwise.
- (4) In a prosecution for an offence under this Act, the Industrial Division of the Magistrates' Court must presume, in the absence of evidence to the contrary, that the prosecutor is authorised to bring the prosecution.
- (5) A prosecution may only be conducted by—
- (a) the person authorised to bring the prosecution; or
- * * * * *
- (c) an Australian lawyer briefed by the person authorised to bring the prosecution. **S. 154(5)(b) repealed by No. 59/1996 s. 9(Sch. 1 item 10(2)).**
S. 154(5)(c) amended by Nos 35/1996 s. 453(Sch. 1 item 24.1), 18/2005 s. 18(Sch. 1 item 62), 17/2014 s. 160(Sch. 2 item 58).

155 Judicial notice of signatures

All courts must take judicial notice of—

S. 155(a)
amended by
No. 59/1996
s. 9(Sch. 1
item 11(a)(b)).

- (a) the signature of a person who is, or was at the time the signature purports to have been made, the Minister, the Chief Administrator or an officer to whom section 154(1)(c) applies; and
- (b) the fact that a person listed in paragraph (a) held the position he or she purported to hold at the time the signature purports to have been made.

S. 156
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 52),
repealed by
No. 59/1996
s. 9(Sch. 1
item 12).

* * * * *

S. 157
repealed by
No. 59/1996
s. 9(Sch. 1
item 12).

* * * * *

158 Conduct of agents imputed to corporations

For the purposes of this Act, any conduct engaged in on behalf of a corporation—

- (a) by a director, employee or agent of the corporation acting within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction, or with the consent (express or implied) of such a director, employee or agent—

is also conduct engaged in by the corporation.

158A Conduct of corporations imputed to directors

- (1) For the purposes of this Act, any conduct engaged in by a corporation (as a result of the application of section 158 or otherwise) is also conduct engaged in by an executive officer of the corporation if the executive officer knew about the conduct or was reckless as to whether it was engaged in.

S. 158A
(Heading)
amended by
No. 29/2006
s. 3(Sch. 1
item 19).

S. 158A
inserted by
No. 23/2005
s. 22.

- (2) In this section—

executive officer of a corporation means—

- (a) a director of the corporation; or
(b) any other person who is concerned, or takes part, in the management of the corporation (regardless of the person's designation).

159 Reverse onus of proof in certain cases

- (1) In a prosecution against an employer for failing to pay an employee an amount owed to the employee under an employment agreement if—

S. 159
amended by
Nos 82/1994
s. 5(2)(Sch. 1
item 53),
23/2005
s. 23(ILA
s. 39B(1)).

- (a) the employee is dead; and
(b) the employer alleges that the period shown in the charge-sheet as being the period of continuous employment of the employee with the employer is wrong—

S. 159(1)(b)
amended by
No. 68/2009
s. 97(Sch.
item 81.3).

the employer bears the onus of proving the allegation.

- (2) In this section, *employment agreement* does not include—

- (a) a federal agreement; or

S. 159(2)
inserted by
No. 23/2005
s. 23,
amended by
No. 56/2006
s. 6(4),
substituted by
No. 24/2009
s. 12.

- (b) any terms and conditions of employment to which an employee is entitled under—
 - (i) a federal award; or
 - (ii) a federal determination.

160 Recovery of money owed

S. 160(1)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 54).

- (1) An employee who is owed any money by an employer under this Act or any other Act, or under any employment agreement or order made under this Act or any other Act, may take proceedings in the Industrial Division of the Magistrates' Court to recover the money owing. The debt must arise out of the employment relationship.

S. 160(2)
substituted by
No. 23/2005
s. 24(1),
amended by
No. 24/2009
s. 13(1).

- (2) An organisation may, if requested to do so by an employee who is, or is eligible to become, a member of the organisation, take proceedings in the Industrial Division of the Magistrates' Court to recover money owed to the employee for long service leave.

S. 160(3)
repealed by
No. 59/1996
s. 9(Sch. 1
item 13), new
s. 160(3)
inserted by
No. 23/2005
s. 24(1).

- (3) Proceedings under this section must be started within 6 years after the employee's entitlement to the money arises.
- (4) Before proceedings may be started under this section, the employer must be given a written demand for the money owed.
- (5) If the Court is satisfied that the employer—
 - (a) had reasonable notice of the employee's claim; and
 - (b) had no reasonable grounds on which to dispute the claim; and

(c) in the circumstances should have paid the claim without the need for proceedings being taken to establish the validity of the claim—

the Court may order the employer to pay interest to the employee on top of any other amount that the employee is entitled to.

(6) The interest must not be greater than the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** that applies at the time the Court makes the order.

(7) If a claim is made under this section by an employee's personal representative, subsections (5) and (6) apply despite anything to the contrary in section 29 of the **Administration and Probate Act 1958**.

(8) In this section—

employee includes a former employee;

employer includes a former employer;

employment agreement does not include—

(a) a federal agreement; or

(b) terms and conditions of employment to which an employee is entitled under—

(i) a federal award; or

(ii) a federal determination;

organisation has the same meaning as in the Commonwealth Fair Work Act.

S. 160(8)
inserted by
No. 23/2005
s. 24(2).

S. 160(8)
def. of
*employment
agreement*
amended by
No. 56/2006
s. 6(5),
substituted by
No. 24/2009
s. 13(2)(a).

S. 160(8)
def. of
*registered
organisation*
substituted as
organisation
by
No. 24/2009
s. 13(2)(b).

161 Court may order payment of arrears on conviction

- (1) If the Industrial Division of the Magistrates' Court finds an employer guilty of an offence relating to the underpayment of an employee, the Court may order the employer to pay the employee any amount that the employee was underpaid and that is still owed to the employee, in addition to imposing a penalty for the offence.

S. 161(2)
repealed by
No. 23/2005
s. 25(1).

* * * * *

- (3) Subsections (5), (6) and (7) of section 160 apply to this section.
- (4) An order under this section may be enforced as if it were an order made by the Court in a civil proceeding. However, if any amount remains to be paid after all reasonable means of civil enforcement have been tried, the order may be enforced as if it were a fine imposed by the Court.
- (5) Nothing in this section limits an employee's rights under section 160, and nothing in that section limits the power of the Court under this section.

S. 161(6)
inserted by
No. 23/2005
s. 25(2).

- (6) In this section—

employee includes a former employee;

employer includes a former employer.

S. 162
amended by
No. 82/1994
s. 5(2)(Sch. 1
items 55, 56),
repealed by
No. 59/1996
s. 9(Sch. 1
item 12).

* * * * *

PART 16—MISCELLANEOUS OFFENCES AND PROVISIONS

* * * * *

S. 163
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 57(a)(b)),
repealed by
No. 59/1996
s. 9(Sch. 1
item 14).

164 Attempting, aiding, inducing etc. offences

A person who—

- (a) attempts to contravene; or
- (b) aids, abets, counsels or procures a person to contravene; or
- (c) induces, or attempts to induce, a person whether by threats or promises or otherwise to contravene—

a provision of this Act for which a penalty is specified is guilty of an offence against that provision and is liable to the penalty specified for a contravention of that provision.

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S. 165
repealed by
No. 59/1996
s. 9(Sch. 1
item 14).

* * * * *

S. 166
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 58),
repealed by
No. 59/1996
s. 9(Sch. 1
item 14).

* * * * *

S. 167
repealed by
No. 59/1996
s. 9(Sch. 1
item 14).

168 Supreme Court—limitation of jurisdiction

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary—

S. 168(a)
amended by
No. 59/1996
s. 9(Sch. 1
item 15(a)).

- (a) to prevent the bringing before the Supreme Court of a proceeding or matter of a kind referred to in section 153(1) of this Act;

S. 168(b)
repealed by
No. 59/1996
s. 9(Sch. 1
item 15(b)).

* * * * *

S. 168(c)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 59),
repealed by
No. 59/1996
s. 9(Sch. 1
item 15(b)).

* * * * *

PART 17—REGULATIONS

169 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) forms for the purposes of this Act;

(b) the particulars to be kept in registers and records kept under this Act;

* * * * *

S. 169(1)(c)
repealed by
No. 59/1996
s. 9(Sch. 1
item 16).

(d) the inspection by employees of records kept under this Act which relate to them;

* * * * *

S. 169(1)(e)
repealed by
No. 59/1996
s. 9(Sch. 1
item 16).

* * * * *

S. 169(1)(ea)
inserted by
No. 82/1994
s. 7(3),
repealed by
No. 59/1996
s. 9(Sch. 1
item 16).

(f) prescribing a penalty of up to 10 penalty units for any breach of the regulations;

(g) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstance.

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S. 169(3)
amended by
No. 23/2005
s. 26(a).

(3) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament in accordance with the requirements of section 23 of the **Subordinate Legislation Act 1994**.

S. 169(4)
repealed by
No. 23/2005
s. 26(b).

* * * * *

Pt 18
(Heading and
ss 170–184)
amended by
No. 82/1994
s. 5(2)(Sch. 1
item 60),
repealed by
No. 59/1996
s. 9(Sch. 1
item 17(1)).

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SCHEDULES

Sch. 1¹⁹ (see Note 19).

Sch. 2²⁰ (see Note 20).

Sch. 3²¹ (see Note 21).

Sch. 4²² (see Note 22).

Sch. 5²³ (see Note 23).

Sch. 6²⁴ (see Note 24).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 29 October 1992

Legislative Council: 6 November 1992

The long title for the Bill for this Act was "A Bill to make fresh provision with respect to the law relating to employee relations in Victoria, to repeal the **Industrial Relations Act 1979** and the **Hospitals Remuneration Tribunal Act 1978**, to amend the **Trade Unions Act 1958**, the **House Contracts Guarantee Act 1987** and the **Magistrates' Court Act 1989** and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 29 October 1992

Legislative Council: 6 November 1992

Absolute majorities:

Legislative Assembly: 5 November 1992 and 12 November 1992

Legislative Council: 11 November 1992

The **Employee Relations Act 1992** was assented to on 24 November 1992 and came into operation as follows:

Sections 1, 2 on 24 November 1992: s. 2(1); ss 3–19, 53–55, 163, 164, 168, 169, 179(3), 180, 183, Sch. 1 on 27 November 1992; ss 36, 37, 51, 52, 105–110, 113(3), 153–161, 179(2), 181, 182, Schs 2, 4 on 4 January 1993; rest of Act (*except* ss 88, 172(2)) on 1 March 1993: Special Gazette (No. 63) 27 November 1992 page 1; ss 88, 172(2) on 4 January 1993: Government Gazette 9 December 1992 page 3680.

The name of this Act was changed from the **Employee Relations Act 1992** to the **Long Service Leave Act 1992** by section 9(Sch. 1 item 1) of the **Commonwealth Powers (Industrial Relations) Act 1996**.

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2 Table of Amendments

This publication incorporates amendments made to the **Long Service Leave Act 1992** by Acts and subordinate instruments.

Public Sector Management Act 1992, No. 68/1992

Assent Date: 19.11.92
Commencement Date: S. 111 on 27.11.92: Special Gazette (No. 63) 27.11.92
p. 1
Current State: This information relates only to the provisions
amending the **Long Service Leave Act 1992**

Public Sector Management (Amendment) Act 1993, No. 97/1993

Assent Date: 16.11.93
Commencement Date: S. 43 on 16.11.93: s. 2(4)
Current State: This information relates only to the provisions
amending the **Long Service Leave Act 1992**

Employee Relations (Amendment) Act 1993, No. 114/1993

Assent Date: 7.12.93
Commencement Date: 7.12.93
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 item 19) on 1.7.94: Government Gazette
23.6.94 p. 1672
Current State: This information relates only to the provisions
amending the **Long Service Leave Act 1992**

Vocational Education and Training (Amendment) Act 1994, No. 62/1994

Assent Date: 15.6.94
Commencement Date: Ss 63–66 on 1.12.94: Government Gazette 23.6.94
p. 1671
Current State: This information relates only to the provisions
amending the **Long Service Leave Act 1992**

Employee Relations (Amendment) Act 1994, No. 82/1994

Assent Date: 29.11.94
Commencement Date: Pt 1(ss 1–3) on 29.11.94: s. 2(1); s. 12 on 3.6.94:
s. 2(2); rest of Act on 11.5.95: Government Gazette
11.5.95 p. 1093
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: S. 34(7) on 7.6.95: Special Gazette (No. 41) 23.5.95
p. 1
Current State: This information relates only to the provisions
amending the **Long Service Leave Act 1992**

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Equal Opportunity Act 1995, No. 42/1995 (as amended by No. 22/1996)

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; s. 223, Sch. 1 item 1 on 1.1.96: Government Gazette 21.12.95 p. 3571; Sch. 2 items 14.1, 14.2 on 14.6.96: s. 2(4)
Current State: This information relates only to the provisions amending the **Long Service Leave Act 1992**

Public Sector Management and Parliamentary Officers (Amendment) Act 1996, No. 24/1996

Assent Date: 2.7.96
Commencement Date: S. 33(1) on 16.11.93: s. 2(2); rest of Act on 2.7.96: s. 2(1)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 24.1, 24.2) on 1.1.97: s. 2(3)
Current State: This information relates only to the provisions amending the **Long Service Leave Act 1992**

Shop Trading Reform Act 1996, No. 38/1996

Assent Date: 6.11.96
Commencement Date: Pt 1 (ss 1–4) on 6.11.96: s. 2(1); rest of Act on 26.11.96: Government Gazette 21.11.96 p. 2971
Current State: All of Act in operation

Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996

Assent Date: 12.12.96
Commencement Date: S. 9(Sch. 1) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15
Current State: This information relates only to the provisions amending the **Long Service Leave Act 1992**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 75) on 15.7.01: s. 2
Current State: This information relates only to the provisions amending the **Long Service Leave Act 1992**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 62) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 37 on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

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Long Service Leave (Amendment) Act 2005, No. 23/2005

Assent Date: 31.5.05
Commencement Date: 1.1.06: s. 2
Current State: All of Act in operation

Statute Law (Further Revision) Act 2006, No. 29/2006

Assent Date: 6.6.06
Commencement Date: S. 3(Sch. 1 item 19) on 7.6.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Long Service Leave (Preservation of Entitlements) Act 2006, No. 56/2006

Assent Date: 15.8.06
Commencement Date: Ss 4, 6 on 27.3.06: s. 2(2); s. 5 on 1.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Fair Work (Commonwealth Powers) Act 2009, No. 24/2009

Assent Date: 17.6.09
Commencement Date: Ss 9–13 on 1.7.09: Special Gazette (No. 227) 1.7.09 p. 1
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 81) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Accident Compensation Amendment Act 2010, No. 9/2010

Assent Date: 23.3.10
Commencement Date: S. 139 on 1.7.10: s. 2(8)
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013

Assent Date: 12.11.13
Commencement Date: S. 649(Sch. 9 item 23) on 1.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 58) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Long Service Leave Act 1992**

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**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 100) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Long Service Leave Act 1992**

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3 Amendments Not in Operation

Not updated for this publication.

4 Explanatory details

¹ Title: Section 11(Sch. 3 items 8–10) of the **Commonwealth Powers (Industrial Relations) Act 1996**, No. 59/1996 read as follows:

8 References to Employee Relations Act 1992

- (1) A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a provision of the **Employee Relations Act 1992** that is repealed by Schedule 1 to this Act must be taken, unless the contrary intention appears, to be a reference to that provision of the former Act.
- (2) A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a provision of the **Employee Relations Act 1992** that is not repealed by Schedule 1 to this Act must be taken, unless the contrary intention appears, to be a reference to that provision of the **Long Service Leave Act 1992**.

9 Savings and transitional regulations

- (1) The Governor in Council may make regulations that contain provisions of a savings and transitional nature consequent on—
 - (a) the enactment of this Act; or
 - (b) the enactment by the Parliament of the Commonwealth of an Act consequent on the enactment of this Act.
- (2) A provision mentioned in subclause (1) may be retrospective in operation.
- (3) Regulations under this clause have effect despite anything to the contrary in any Act other than this Act or in any instrument made under an Act.

10 Interpretation of Legislation Act 1984

This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.

² Pt 2 (Heading and ss 8–19) amended by Nos 114/1993 s. 4, 62/1994 ss 63, 64, 82/1994 ss 4(1)(2), 5(2)(Sch. 1 items 3, 4), 6(2), repealed by No. 59/1996 s. 9(Sch. 1 item 7(1)).

Pt 2 (*repealed*): Section 11(Sch. 3 item 6) of the **Commonwealth Powers (Industrial Relations) Act 1996**, No. 59/1996 reads as follows:

6 References to employment agreements

A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to an employment agreement within the meaning of the **Employee Relations Act 1992** must be taken to be a reference to an employment agreement within the meaning of that Act as in force immediately before the repeal of Part 2 of that Act.

³ Pt 3 (Heading and ss 20–35) amended by No. 62/1994 ss 65, 66, repealed by No. 82/1994 s. 5(1), new Pt 3 (Heading and ss 20–26) inserted by No. 82/1994 s. 6(1), repealed by No. 59/1996 s. 9(Sch. 1 item 7(1)).

⁴ Pt 4 (Heading and ss 36, 37) amended by Nos 82/1994 s. 5(2)(Sch. 1 items 5(a)(b), 6), 42/1995 s. 223(Sch. 1 item 1), repealed by No. 59/1996 s. 9(Sch. 1 item 7(1)).

⁵ Pt 5 Div. 1 (Heading and ss 38–42) amended by No. 82/1994 s. 7(1)(2), repealed by No. 59/1996 s. 9(Sch. 1 item 7(2)).

⁶ Pt 5 Div. 2 (Heading and ss 43, 44) amended by No. 82/1994 s. 5(2)(Sch. 1 item 7(a)(b)), repealed by No. 59/1996 s. 9(Sch. 1 item 7(2)).

⁷ Pt 5 Div. 3 (Heading and ss 45–50) amended by No. 82/1994 s. 5(2)(Sch. 1 items 8–12), repealed by No. 59/1996 s. 9(Sch. 1 item 7(2)).

⁸ Pt 5 Div. 4 (Heading and ss 51, 52) repealed by No. 59/1996 s. 9(Sch. 1 item 7(2)).

⁹ Pt 5 Div. 5 (Heading and ss 53–55) repealed by No. 59/1996 s. 9(Sch. 1 item 7(2)).

¹⁰ Pt 6 (Heading and ss 82–89) amended by No. 82/1994 s. 5(2)(Sch. 1 items 19, 20), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

Pt 6 (*repealed*): Section 11(Sch. 3 item 2) of the **Commonwealth Powers (Industrial Relations) Act 1996**, No. 59/1996 reads as follows:

2 Abolition of Commission

- (1) The Employee Relations Commission of Victoria established by section 82 of the **Employee Relations Act 1992** is abolished and the members of that Commission go out of office.
- (2) The Commission Administration Office established by section 88 of the **Employee Relations Act 1992** is abolished and the Chief Commission Administration Officer goes out of office.

¹¹ Pt 7 (Heading and ss 90–97) amended by No. 82/1994 ss 5(2)(Sch. 1 items 21, 22), 6(3), 8(1), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

Pt 7 (*repealed*): Section 11(Sch. 3 items 1, 3–5) of the **Commonwealth Powers (Industrial Relations) Act 1996**, No. 59/1996 read as follows:

1 Definitions

In this Schedule—

commencement day means the day on which section 11 comes into operation;

former Act means the **Employee Relations Act 1992** as in force immediately before the commencement day;

former Commission means the Employee Relations Commission of Victoria established by section 82 of the **Employee Relations Act 1992**.

3 Proceedings

- (1) In this clause, *relevant proceeding* means a proceeding under an Act other than the former Act (except under Division 1 of Part 5 of that Act)—

- (a) begun before the former Commission before the commencement day and which had not been completed at that day; and
 - (b) that could have been brought before the Industrial Division of the Magistrates' Court or, in the case of an application under Division 1 of Part 5 of the former Act, the Australian Industrial Relations Commission if it had been begun on or after the commencement day.
- (2) If before the commencement day the former Commission had begun to hear any relevant proceeding and at that day evidence on any question of fact material to that proceeding had been given to the former Commission but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Industrial Division of the Magistrates' Court for a determination under subclause (3).
- (3) On an application under subclause (2), the Industrial Division of the Magistrates' Court may determine—
- (a) to accept the proceeding as part-heard and to continue the hearing; or
 - (b) to re-hear the proceeding—
- in accordance with the Act under which it is brought.
- (4) If a relevant proceeding is continued to be heard, or is re-heard, by the Industrial Division of the Magistrates' Court in accordance with a determination under subclause (3), anything done in relation to that proceeding before the commencement day shall, so far as consistent with the Act under which it is brought, be taken to have been done for the purposes of the hearing and

determination of the proceeding by the Magistrates' Court and the Court may, for the purposes of the hearing or re-hearing, have regard to any record of the earlier proceeding before the former Commission.

- (5) If before the commencement day a relevant proceeding was pending before the former Commission but the former Commission had not begun to hear it or had begun to hear it but at the commencement day had not been given evidence on any question of fact material to it, the proceeding is to be heard and determined by the Industrial Division of the Magistrates' Court or, in the case of an application under Division 1 of Part 5 of the former Act, the Australian Industrial Relations Commission in accordance with the Act under which it is brought and anything done in relation to that proceeding must, so far as consistent with that Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court or the Australian Industrial Relations Commission, as the case requires.
- (6) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate or the President of the Australian Industrial Relations Commission, as the case requires, may make any order that he or she considers appropriate to resolve the difficulty.
- (7) The Chief Magistrate or the President of the Australian Industrial Relations Commission may make an order under subclause (6) on the application of a party to the matter, or on the Chief Magistrate's or the President's own initiative.

- (8) An order under subclause (6) has effect despite anything to the contrary in the former Act or in the Act under which the matter arises.

4 Pending proceedings under former Act

- (1) In this clause, *relevant proceeding* means a proceeding under the former Act except under Division 1 of Part 5 of that Act—
- (a) begun before the former Commission before the commencement day and which had not been completed at that day; and
 - (b) that could have been brought before the Australian Industrial Relations Commission if it had been begun on or after the commencement day; and
 - (c) with respect to the hearing and determination of which provision is not made on the commencement day by the Commonwealth Act or the Workplace Relations and Other Legislation Amendment Act (No. 2) 1996 of the Commonwealth.
- (2) If before the commencement day the former Commission had begun to hear any relevant proceeding and at that day evidence on any question of fact material to that proceeding had been given to the former Commission but the proceeding had not been finally determined, any party to the proceeding may apply in writing to the Industrial Division of the Magistrates' Court for a determination under subclause (3).
- (3) On an application under subclause (2), the Industrial Division of the Magistrates' Court may determine—
- (a) to accept the proceeding as part-heard and to continue the hearing; or

- (b) to re-hear the proceeding—
in accordance with the former Act.
- (4) If a relevant proceeding is continued to be heard, or is re-heard, by the Industrial Division of the Magistrates' Court in accordance with a determination under subclause (3), anything done in relation to that proceeding before the commencement day shall, so far as consistent with the former Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court and the Court may, for the purposes of the hearing or re-hearing, have regard to any record of the earlier proceeding before the former Commission.
- (5) If before the commencement day a relevant proceeding was pending before the former Commission but the former Commission had not begun to hear it or had begun to hear it but at the commencement day had not been given evidence on any question of fact material to it, the proceeding is to be heard and determined by the Industrial Division of the Magistrates' Court in accordance with the former Act and anything done in relation to that proceeding must, so far as consistent with that Act, be taken to have been done for the purposes of the hearing and determination of the proceeding by the Magistrates' Court.
- (6) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.
- (7) The Chief Magistrate may make an order under subclause (6) on the application of a party to the matter, or on the Chief Magistrate's own initiative.

- (8) An order under subclause (6) has effect despite anything to the contrary in the former Act.

5 New proceedings under former Act

- (1) In this clause, *relevant proceeding* means a proceeding under the former Act except under Division 1 of Part 3 or Division 6 of Part 5—
- (a) that was not brought before the former Commission before the commencement day; and
 - (b) that could have been brought before the former Commission before the commencement day; and
 - (c) with respect to the hearing and determination of which provision is not made on the commencement day by the Commonwealth Act or the Workplace Relations and Other Legislation Amendment Act (No. 2) 1996 of the Commonwealth.
- (2) A relevant proceeding may be brought before the Industrial Division of the Magistrates' Court in accordance with the former Act and the Industrial Division may hear and determine the proceeding in accordance with that Act and, for this purpose, that Act has effect as if a reference in it to the former Commission were a reference to the Industrial Division.
- (3) If any difficulty arises in any particular matter because of the operation of this clause, the Chief Magistrate may make any order that he or she considers appropriate to resolve the difficulty.
- (4) The Chief Magistrate may make an order under subclause (3) on the application of a party to the matter, or on the Chief Magistrate's own initiative.

(5) An order under subclause (3) has effect despite anything to the contrary in the former Act.

¹² Pt 8 (Heading and ss 98–101) amended by No. 82/1994 ss 5(2)(Sch. 1 items 23–26), 6(4), 8(2), 9, repealed by No. 59/1996 s. 9(Sch. 1 item 9).

¹³ Pt 9 (Heading and ss 102–114) amended by Nos 114/1993 s. 5, 82/1994 ss 5(2)(Sch. 1 items 27, 28), 10, 35/1996 s. 453(Sch. 1 item 24.1), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

¹⁴ Pt 10 (Heading and ss 115–118) amended by No. 82/1994 s. 5(2)(Sch. 1 items 29–32), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

¹⁵ Pt 11 (Heading and ss 119–134) amended by Nos 82/1994 s. 5(2)(Sch. 1 items 33(a)(b), 34, 35(a)(b), 36(a)(b), 37(a)(b)), 35/1996 s. 453(Sch. 1 item 24.2), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

¹⁶ Pt 12 (Heading and ss 135–139) amended by No. 82/1994 s. 5(2)(Sch. 1 items 38–43(a)(b)), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

Pt 12 (*repealed*): Section 11(Sch. 3 item 7) of the **Commonwealth Powers (Industrial Relations) Act 1996**, No. 59/1996 reads as follows:

7 References to recognised associations

A reference in any Act or subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a recognised association within the meaning of the **Employee Relations Act 1992** must be taken to be a reference to an organisation registered under the Workplace Relations Act 1996 of the Commonwealth.

¹⁷ Pt 13 (Heading and ss 140–145) amended by Nos 82/1994 s. 5(2)(Sch. 1 items 44–48), 109/1994 s. 34(7)(a)(b), repealed by No. 59/1996 s. 9(Sch. 1 item 9).

¹⁸ Pt 14 (Heading and ss 146–152) amended by Nos 82/1994 s. 5(2)(Sch. 1 items 49–51), 38/1996 s. 14, repealed by No. 59/1996 s. 9(Sch. 1 item 10(1)).

¹⁹ Sch. 1 amended by Nos 23/1994 s. 118(Sch. 1 items 19.2(a)–(d), 19.3(a)(b)), 82/1994 ss 5(2)(Sch. 1 items 61(a)–(t)), s. 11(1)(a)–(d)(2), repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).

²⁰ Sch. 2 repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).

²¹ Sch. 3 amended by No. 42/1995 s. 224(Sch. 2 item 14.1) (as amended by No. 22/1996 s. 12), repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).

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²² Sch. 4 amended by No. 42/1995 s. 224(Sch. 2 item 14.2(a)(b)), repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).

²³ Sch. 5 amended by No. 82/1994 s. 4(3), repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).

²⁴ Sch. 6 repealed by No. 59/1996 s. 9(Sch. 1 item 17(2)).