



Western Australia

Local Government Act 1960

## **Local Government (Long Service Leave) Regulations**

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Western Australia

## **Local Government (Long Service Leave) Regulations**

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### **Defined terms**



Western Australia

Local Government Act 1960

## Local Government (Long Service Leave) Regulations

### 1. Citation

These regulations may be cited as the *Local Government (Long Service Leave) Regulations*<sup>1</sup>.

### 2. Definitions

In these regulations —

***Commission in Court Session*** and ***Registrar*** have the respective meanings given to those expressions in the *Industrial Relations Act 1979*;

***effective date*** has the meaning given to that expression in section 161 of the Act, that is to say, the date on which these regulations take effect;

***employer*** means the municipality by which a worker is employed or, in the case of the joint employment of a worker by 2 or more municipalities, those municipalities;

***long service benefit*** means long service leave with pay or a lump sum payment in lieu of long service leave or in lieu or on account of pro rata long service leave;

***Minister*** means the Minister for Local Government;

***municipality*** means a municipality or regional council constituted under the Act;

***national service*** means service under the *National Service Act 1951* of the Parliament of the Commonwealth as amended or under any Act passed in substitution for that Act;

***superseded long service benefits scheme*** means —

- (a) the *Long Service Leave Act 1958*;
- (b) by-laws made pursuant to section 230 of the Act as enacted before the effective date; or
- (c) the provisions relating to long service benefits in an industrial award or agreement in force under the *Industrial Arbitration Act 1912*<sup>2</sup>;

***the Board*** means the Board of Reference constituted under regulation 12;

***worker*** means an officer or employee employed by a municipality.

*[Regulation 2 amended in Gazette 15 Aug 1986 p. 2956.]*

### **3. Transitional and saving provisions**

- (1) Subject to subregulation (4) where a worker has become entitled to a long service benefit under a superseded long service benefits scheme and has not been granted that benefit before the effective date he shall retain his entitlement to that benefit on and after the effective date.
- (2) Notwithstanding anything contained in these regulations —
  - (a) where a worker was in the service of an employer on 1 July 1977 and by-laws in force immediately before the effective date, being by-laws made by the employer pursuant to section 230 of the Act as enacted before the effective date, provided for entitlements to long service leave after periods of continuous service of less than 10 years, the worker shall continue to become entitled to such long service leave after such periods of continuous service as were, respectively, prescribed in those by-laws until his service with that employer terminates;

- (b) where a worker who was in the service of an employer on 1 July 1977 leaves that service and that worker —
- (i) does not enter service that is regarded, for the purposes of these regulations, as continuous with his service with that employer;
  - (ii) would, under the provisions of by-laws in force immediately before the effective date, being by-laws made by that employer pursuant to section 230 of the Act as enacted before the effective date, have been entitled to a payment on account of pro rata long service leave; and
  - (iii) is not entitled to a payment in lieu of pro rata long service leave under regulation 6 or is entitled to such a benefit on terms less favourable than those that would have applied to him under the by-laws mentioned in subparagraph (ii),
- that worker shall, on the termination of that service, be entitled to a payment on account of pro rata long service leave in accordance with the by-laws mentioned in subparagraph (ii).
- (3) Where a worker commences a period of long service leave to which he is entitled by reason of subregulation (1) or (2)(a) he shall be entitled to be paid for that leave in accordance with the relevant superseded long service benefits scheme.
- (4) Where a worker is entitled to long service leave by reason of subregulation (1) or (2)(a) and his service with an employer is terminated before he has taken or fully taken that leave his entitlement to that leave shall cease but he shall be entitled, on account thereof, to a payment in accordance with the relevant superseded long service benefits scheme.

**4. Service**

In determining the entitlement of a worker to long service benefits under these regulations the service that shall be taken into account is —

- (a) in every case — continuous service with one or more employers after 30 June 1977; and
- (b) in the case of the worker who was in the service of an employer on 1 July 1977 — continuous service with that employer between 1 July 1967 and 30 June 1977 (both dates inclusive),

and that service shall be deemed to include —

- (c) any period of absence from duty on any annual leave or long service leave;
- (d) any period of absence from duty necessitated by sickness of or injury to the worker but only to the extent of 3 months in each calendar year; and
- (e) any period during which the service of the worker was or is interrupted by national service but only if the worker as soon as reasonably practicable after the completion of that national service resumed or resumes his service with his former employer or entered or enters the service of another employer,

but shall not include —

- (f) any absence from duty on leave without pay unless the employer determines otherwise; or
- (g) service in respect of which the worker has become entitled to a long service benefit before the effective date under the provisions of a superseded long service benefits scheme.

## **5. Continuity of service**

For the purpose of determining the entitlement of a worker to long service benefits under these regulations the service of a worker shall be regarded as continuous notwithstanding —

- (a) any absence of the worker from duty if leave of absence has been granted by his employer;

- (b) the absence of the worker on account of national service if by operation of regulation 4 the period of absence is deemed to be included in the service of the worker for the purposes of these regulations;
- (c) there being a period of time between the worker leaving the service of one employer and entering the service of another employer if the period is used for recreation leave or as travelling time and does not exceed —
  - (i) the period in respect of which payment has been made by the first-mentioned employer in lieu of the worker's accrued and pro rata leave entitlements; or
  - (ii) 2 weeks,whichever is the longer.

**6. Entitlement to leave**

- (1) The long service benefits to which a worker shall be entitled by reason of continuous service with one or more employers shall be as provided in this regulation.
- (2) Subject to subregulation (5) and regulations 6A and 6B a worker is entitled to 13 weeks long service leave in respect of each 10 years' continuous service that he completes.
- (3) Where the service of a worker who has previously become entitled to long service leave under subregulation (2) is terminated in any circumstances otherwise than by his employer for serious and wilful misconduct, and the worker does not within the time specified in regulation 5(c)(i) or (ii), whichever is the longer, enter the service of another employer the worker shall be entitled to a payment calculated under regulation 8(1) in lieu of an amount of pro rata long service leave on the basis of one and three-tenths weeks leave for each year of continuous service that he has completed since he last became entitled under subregulation (2) to an amount of long service leave, and, for the purpose of calculating that payment, the worker shall be

deemed to have commenced that leave immediately prior to the termination of his service.

- (4) Where the service of a worker who has completed at least 7 years continuous service but has not previously become entitled to long service leave under subregulation (2) is terminated in any circumstance otherwise than by his employer for serious and wilful misconduct, and the worker does not within the time specified in regulation 5(c)(i) or (ii), whichever is the longer, enter the service of another employer the worker shall be entitled to a payment calculated under regulation 8(1) in lieu of an amount of pro rata long service leave on the basis of one and three-tenths weeks leave for each year of continuous service that he has completed and, for the purpose of calculating that payment, the worker shall be deemed to have commenced that leave immediately prior to the termination of his service.
- (5) Where a worker is entitled to long service leave by reason of subregulation (2) and his service with an employer is terminated before he has taken or fully taken that leave his entitlement to that leave shall cease but he shall be entitled, in lieu thereof, to a payment calculated in accordance with regulation 8(1) or (2), whichever is applicable.

*[Regulation 6 amended in Gazette 1 Jul 1983 p. 2143-4;  
22 Jul 1994 p. 3762.]*

**6A. Leave on half pay**

Where a worker commences a period of long service leave, the worker may, if the worker and his employer so agree in writing, be paid for each week of that period at half the rate at which he would otherwise be entitled under regulation 8 to be paid, but only half of any period of leave in respect of which the worker is so paid shall be taken into account for the purpose of ascertaining the amount of leave, if any, to which he is thereafter entitled and for the purpose of applying the formula in regulation 9(3).

*[Regulation 6A inserted in Gazette 1 Jul 1983 p. 2144;  
amended in Gazette 26 Sep 1986 p. 3732.]*

**6B. Leave on double pay**

Where a worker commences a period of long service leave the worker may, if the worker and his or her employer so agree in writing, be paid for each week of that period at double the rate at which he or she would otherwise be entitled under regulation 8 to be paid, but double any period of leave in respect of which the worker is so paid shall be taken into account for the purpose of ascertaining the amount of leave, if any, to which the worker is thereafter entitled and for the purposes of applying the formula in regulation 9(3).

*[Regulation 6B inserted in Gazette 22 Jul 1994 p. 3763.]*

**7. Taking leave**

- (1) Where a worker is entitled to long service leave —
  - (a) at least 2 months' notice of the date from which the leave is to be taken shall be given by one party to the other unless otherwise agreed in writing between the parties;
  - (b) the employer shall not require the worker to commence the leave within 6 months of the date on which the worker became entitled to it;
  - (c) the leave taken shall be inclusive of any public holidays allowable under the worker's conditions of employment but shall not be inclusive of any annual leave;
  - (d) the leave may be granted and taken in one consecutive period or, if the worker and the employer so agree, in not more than 3 separate periods.
- (2) Subject to subregulation (1) long service leave shall be taken at the earliest practicable date.

**8. Payment for or in lieu of leave**

- (1) Subject to subregulation (2) a worker who commences or is deemed to commence a period of long service leave or pro rata long service leave under regulation 6 shall be entitled to be paid for each week of that period at the ordinary time rate applicable to his usual classification (excluding all allowances) in the week for which the payment is made.
- (1a) For the purposes of subregulation (1), the ordinary time rate applicable to a casual or part-time worker in a week for which a payment is made shall be deemed to be the rate that he would have been paid in that week if, in that week, he had worked for the number of hours that he worked on the average in a week during the period of 12 months immediately preceding the commencement or deemed commencement of his leave.
- (2) Where the commencement of long service leave under regulation 6 has been postponed to meet the convenience of the worker beyond the period of 6 months mentioned in regulation 7(1)(b) the rate of payment for or in lieu of that leave shall be the rate applicable to him for ordinary time (excluding all allowances) at the end of that period of 6 months unless otherwise agreed in writing between the employer and the worker.
- (3) A payment for long service leave shall be made by the employer in full before the worker commences the leave or, where the employer and the worker jointly agree, by periodical payment except that, where a payment for long service leave includes an amount by reason of an increase in the relevant rate of payment given after the commencement of the leave, it is sufficient compliance with this subregulation if the amount included by reason of that increase is paid not later than the next normal pay day after the end of the period of leave.
- (4) In any case to which regulation 3(2)(b) or (4) or regulation 6(3), (4) or (5) applies the payment to which the worker is entitled in

lieu or on account of long service leave or pro rata long service leave, as the case may be, shall be paid by the employer —

- (a) upon termination of the service of the worker otherwise than by death — to the worker; or
- (b) upon termination of the service of the worker by death — to the personal representative of the worker upon request by the personal representative.

*[Regulation 8 amended in Gazette 1 Jul 1983 p. 2144;  
15 Aug 1986 p. 2956.]*

**9. Contribution towards cost of benefit**

- (1) In this regulation *cost*, in relation to a long service benefit, means —
  - (a) in the case of leave granted to and taken by a worker — the total amount paid by the employer pursuant to regulation 8(3);
  - (b) in a case in which a payment is made by the employer under regulation 8(4) in lieu or on account of long service leave or pro rata long service leave — the amount of that payment.
- (2) Where a long service benefit is granted and taken by or in respect of a worker and the service in respect of which the benefit accrued includes, in addition to service with the municipality with which he is serving at the time of, or immediately before, the benefit is taken, a period of service with one or more other municipalities, the council of the first-mentioned municipality shall bear the cost of the benefit but may, in respect of that period of service, recover from the council of each such other municipality a contribution towards the cost determined in accordance with subregulation (3).
- (3) The contribution towards any cost of a long service benefit that may be recovered from the council of a municipality pursuant to subregulation (2) in respect of a period of service with that

municipality shall be determined in accordance with the formula —

$$C = \frac{(L \times S \times P)}{TS}$$

where —

- C is the amount of the contribution that may be recovered from that council;
  - L is the amount of long service leave or pro rata long service leave for or in lieu of which the cost is paid (expressed in weeks);
  - S is that period of service (expressed in completed weeks);
  - P is the weekly rate of pay for ordinary time applicable to the usual classification of the worker (excluding all allowances) in the week immediately preceding the end of that period of service; and
  - TS is the total period of service in respect of which the long service benefit accrued (expressed in completed weeks).
- (4) Where a worker is or was employed jointly and concurrently by 2 or more municipalities the cost of a long service leave benefit shall be divided equally between the councils of those municipalities unless they have agreed to meet the cost on some different basis, and, in relation to a contribution towards the cost of a long service leave benefit, the formula mentioned in subregulation (3) shall, to such extent as is necessary be modified so that the council of each municipality contributes in equal proportions unless they have agreed to contribute on some different basis.

*[Regulation 9 amended in Gazette 15 Aug 1986 p. 2956; 26 Sep 1986 p. 3732.]*

**10. Worker not to be employed during leave**

- (1) A worker shall not, during any period when he is on long service leave, engage in any employment for reward in substitution for the service from which he is on leave.

- (2) If, during a period of long service leave, a worker fails to comply with subregulation (1) he shall forfeit his right to the unexpired portion of the period, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made in respect of the period.
- (3) Where pursuant to subregulation (2) an employer reclaims any payments made in respect of a period of long service leave it shall make an appropriate refund to the council of any municipality that has contributed towards those payments under regulation 9.

**11. Records to be kept by employers**

- (1) Each employer shall, during the service of a worker in his service and for a period of 10 years thereafter keep a record from which can readily be ascertained —
  - (a) the name of the worker and his classification;
  - (b) the dates on which the service of the worker commenced and terminated;
  - (c) details of any absence of the worker from duty;
  - (d) the entitlement of the worker to long service leave;
  - (e) details of any long service benefit granted to the worker during or on termination of his service.
- (2) An employer shall make copies of the records kept pursuant to subregulation (1) available to the worker or to another employer upon written request being made to it in that regard.

**12. Constitution of Board of Reference**

- (1) A Board of Reference is hereby constituted for the purposes of these regulations.
- (2) Subject to subregulation (3) the Board shall consist of —
  - (a) one member who shall be appointed in writing by the Confederation of Western Australian Industry (Inc.);

- (b) one member who shall be appointed jointly and in writing by the Municipal officers Association of Australia and the Association of Professional Engineers, Australia;
  - (c) one member who shall be appointed jointly and in writing by the Federated Municipal and Shire Council Employees Union of Australia and the Trades and Labor Council of Western Australia;
  - (d) one member who shall be appointed in writing by the Minister and who shall be Chairman.
- (2a) The member of the Board appointed pursuant to subregulation (2)(c) as in force on the day before the coming into operation of the *Local Government (Long Service Leave) Amendment Regulations 1983*<sup>1</sup> and holding office on that day, and the person so appointed to be the deputy of that member and so holding office, shall continue to hold their respective offices after that day and shall be deemed to have been appointed pursuant to subregulation (2)(c) as in force after the coming into operation of the *Local Government (Long Service Leave) Amendment Regulations 1983*<sup>1</sup>.
- (3) The person appointed pursuant to subregulation (2)(b) shall only be a member the Board for the purposes of the determination of matters relating to persons who are or, at the relevant time, were officers within the meaning of the Act and the person appointed pursuant to subregulation (2)(c) shall only be a member of the Board for the purposes of the determination of matters relating to persons who are not or, at the relevant time, were not officers within the meaning of the Act.
- (4) An appointment required under subregulation (2)(a), (b) or (c) shall be conveyed to the Minister as soon as practicable after the effective date and, thereafter, whenever a vacancy occurs in the office of a member of the Board referred to in that paragraph.
- (5) Each of the organisations referred to in subregulation (2)(a), (b) or (c) may appoint, in the same manner as members are

appointed, deputy members one of whom may deputise for the member for whom he is deputy at any sitting of the Board.

- (6) A member or deputy member of the Board shall hold office at the pleasure of the organisation or person by which or by whom he was appointed.
- (7) A person who is or has been a member or deputy member of the Board is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any authority, power or jurisdiction conferred by these regulations.

*[Regulation 12 amended in Gazette 17 Aug 1979 p. 2521;  
1 Jul 1983 p. 2144.]*

**13. Functions of Board**

The functions of the Board include the determination of all questions and disputes referred by a party thereto from time to time arising for determination concerning, or in relation to, or in connection with, the provision of long service benefits under these regulations and rights and liabilities in respect of such benefits including, without derogation from the generality of the foregoing, questions and disputes —

- (a) as to whether a person is or is not, or was or was not, a worker;
- (b) as to whether and when and to what extent a worker is or has become entitled to a long service benefit;
- (c) as to whether and to what extent a deceased person's personal representatives are or have become entitled to a long service benefit;
- (d) as to the rate of pay to be applied for the purposes of calculating the payment to be made for or in lieu or on account of long service leave or pro rata long service leave or for the purposes of regulation 9(3),

but do not include power, authority or jurisdiction to make an order or give a direction to enforce compliance by an employer with any obligation imposed on it by this Act.

*[Regulation 13 amended in Gazette 1 Jul 1983 p. 2144.]*

**14. Power to hold inquiries**

- (1) The Board may, for any purpose connected with, or related to, the carrying out of its functions —
  - (a) hold any inquiry;
  - (b) summon witnesses;
  - (c) receive evidence on oath or affirmation;
  - (d) administer an oath or affirmation; and
  - (e) require the production of documents or records.
- (2) A person who having been lawfully summoned to appear at an inquiry before the Board does not appear in obedience to the summons, or who appears, whether summoned or not, and —
  - (a) refuses to be sworn or affirmed as a witness;
  - (b) refuses to answer any question he is lawfully required to answer; or
  - (c) refuses to produce any document or record he is lawfully required to produce,

commits an offence against these regulations.

Penalty: \$200.

**15. Determination, notification and appeal**

- (1) Where the Board makes a determination of any question or dispute, the Chairman shall, at the request of any party to the question or dispute, issue to the party a certificate in writing signed by him certifying as to the determination.
- (2) Any party to a question or dispute on which the Board has made a determination under these regulations may appeal against the determination to the Commission in Court Session.

- (3) Notice of an appeal under subregulation (2) shall be lodged with the Registrar and served upon the other party or parties to the question or dispute within 21 days of the determination of the Board.
- (4) An appeal under subregulation (2) shall be heard and determined in the manner prescribed under the *Industrial Relations Act 1979* for appeals referred to in section 48 of that Act, with such modifications as are necessary.

*[Regulation 15 amended in Gazette 15 Aug 1986 p. 2956.]*

**16. Enforcement**

- (1) An obligation imposed by these regulations may be enforced against a person or municipality by civil proceedings in a court of competent jurisdiction.
- (2) In any proceeding under subregulation (1) a determination of the Board, or of the Commission in Court Session on appeal to it under regulation 15(2), shall, according to its tenor, be conclusive evidence of the existence, nature and extent of an obligation imposed by these regulations.

**Notes**

- <sup>1</sup> This is a compilation of the *Local Government (Long Service Leave) Regulations* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Local Government (Long Service Leave) Regulations</i>	16 Dec 1977 p. 4655-60	16 Dec 1977
	17 Aug 1979 p. 2521	17 Aug 1979
<i>Local Government (Long Service Leave) Amendment Regulations 1983</i>	1 Jul 1983 p. 2143-4	1 Jul 1983
<i>Local Government (Long Service Leave) Amendment Regulations 1986</i>	15 Aug 1986 p. 2956	15 Aug 1986
<i>Local Government (Long Service Leave) Amendment Regulations (No. 2) 1986</i>	26 Sep 1986 p. 3732	26 Sep 1986
<i>Local Government (Long Service Leave) Amendment Regulations 1994</i>	22 Jul 1994 p. 3762-3	22 Jul 1994
<b>Reprint of the <i>Local Government (Long Service Leave) Regulations</i> as at 15 Jun 2001</b> (includes amendments listed above)		

- <sup>2</sup> Repealed by the *Industrial Arbitration Act 1979* which is now known as the *Industrial Relations Act 1979*.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Commission in Court Session .....	2
cost .....	9(1)
effective date .....	2
employer .....	2
long service benefit .....	2
Minister .....	2
municipality .....	2
national service .....	2
Registrar .....	2
superseded long service benefits scheme .....	2
the Board .....	2
worker .....	2