

**LONG SERVICE LEAVE (AMENDMENT) ACT.**

**New South Wales**



ANNO SEXTO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 87, 1967.**

An Act to make further provisions with respect to long service leave; for this purpose to amend the Long Service Leave Act, 1955–1965, and the Long Service Leave (Metalliferous Mining Industry) Act, 1963; and for purposes connected therewith. [Assented to, 18th December, 1967.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title and citation.** 1. (1) This Act may be cited as the "Long Service Leave (Amendment) Act, 1967".

(2)

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(2) The Long Service Leave Act, 1955, as amended **No. 87, 1967** by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

(3) The Long Service Leave (Metalliferous Mining Industry) Act, 1963, as amended by the Decimal Currency Act, 1965, and by this Act, may be cited as the Long Service Leave (Metalliferous Mining Industry) Act, 1963-1967.

**2. The Long Service Leave Act, 1955-1965, is amended—**

Amendment  
of Act No.  
38, 1955.

(a) (i) by inserting in paragraph (a) of subsection two of section four after the word "subsection" the words "and subsection thirteen of this section";

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service  
leave.)

(ii) by inserting in subparagraph (iii) of the same paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";

(b) (i) by inserting at the end of subsection three of the same section the following words :—

Provided that where any leave has been given to and taken by the worker pursuant to subsection (3A) of this section, this subsection shall apply to and in respect of so much only of the leave to which the worker has become entitled as has not been so given and taken.

(ii) by inserting next after the same subsection the following new subsection :—

(3A) If the employer and the worker so agree, a period of long service leave of not less than one month may be given by the employer, and taken by the worker, wholly or partly in advance before the worker has become entitled to any long service leave or to the amount so agreed to be given and taken. No such agreement shall, for the purposes of paragraph (b) or (c) of subparagraph (i) of paragraph (a)

of

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of subsection two of this section, be deemed to confer on the worker an entitlement to long service leave.

- (c) (i) by inserting in subparagraph (ii) of paragraph (a) of subsection five of the same section after the word "termination" the words "and has not been taken";
- (ii) by inserting in the same paragraph after the words "the worker shall" the words ", subject to subsection thirteen of this section,";
- (iii) by inserting in paragraph (b) of the same subsection after the word "death" the words "and has not been taken";
- (iv) by inserting at the end of the same subsection the following new paragraph :—

(c) On the termination of the services of a worker who had taken any leave pursuant to subsection (3A) of this section his employer may, subject to this paragraph and subsection thirteen of this section, deduct from any remuneration payable on such termination in respect of the worker's services—

- (i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services—ordinary pay for the leave so taken; or
- (ii) if the worker had become so entitled—ordinary pay for the excess, if any, over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuant to this Act by that employer to and taken by the worker.

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The amount so deducted shall not exceed No. 87, 1967  
the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
  - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.

(d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words "subject to subsection twelve of this section,";

(e) by inserting next after the same subsection the following new subsections:—

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an

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Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

(b) For the purposes of this subsection, the former employer to whom application for reinstatement is required to be made pursuant to an Act of the Parliament of the Commonwealth of Australia referred to in paragraph (a) of this subsection shall, notwithstanding anything contained in any such Act, be deemed to be and always to have been the employer by whom the member of the naval, military or air forces of the Commonwealth was last employed before the commencement of the service, as such a member, entitling him to apply to be reinstated in civil employment.

(13) (a) In this subsection—

“Award” means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.

“Corporation” means any body corporate formed or incorporated in or outside New South Wales.

“Holding company” and “subsidiary” have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

“Termination”

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"Termination" means termination by any person No. 87, 1967 or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company, of another corporation, the first mentioned corporation and that other corporation shall, and no two corporations shall in any other case, be deemed to be related to each other;

(ii) a worker shall be deemed to have transferred from the service of an employer to the service of another employer, only if before, concurrently with or within a period of two months after the termination of his services with the first mentioned employer he entered into a contract of employment with that other employer, and the transfer shall be deemed to have occurred at the time of that termination.

(c) Where before or after the commencement of the Long Service Leave (Amendment) Act, 1967, a worker has transferred from the service of an employer (in this paragraph called the first employer) being a corporation to the service of another employer being a corporation related to the first employer at the time of that transfer, then for the purposes of this section—

(i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transfer; and

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(ii) the period of service which the worker had had with the first employer before the commencement of his service with that other employer (including any service which by reason of a prior transfer or prior transfers or for any other reason he is deemed by this section or, for the purposes of long service leave for such service, he is deemed by any Act or award to have had with the first employer) shall be deemed to be service of the worker with that other employer.

(d) Where before or after the commencement of the Long Service Leave (Amendment) Act, 1967, a worker has entered into a contract of employment with an employer, being a corporation, within a period of twelve months after the completion of an apprenticeship with another employer, being a corporation which at the time of such entry into employment was related to the first mentioned employer, the period of his apprenticeship shall be taken into account for the purpose of ascertaining the period of his service with the first mentioned employer under that contract of employment.

(e) Where the services of a worker with an employer are terminated and that employer is a corporation to which any other corporation is related at the time of that termination, the services of the worker shall not, for the purposes of subsections two and five of this section, be deemed to have been so terminated if he transfers to the employment of any such related corporation.

(f) A worker or his personal representative shall not be entitled by virtue of this subsection to long service leave or payment therefor in respect of any period of service if in respect of that period of service an employer was required by any other provisions of this Act, or by any other Act or any award,

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award, to give to the worker any long service leave and to pay wages or other remuneration therefor, or to pay wages or other remuneration for long service leave deemed to have been given to the worker, and if the obligations of that employer in that behalf have been fully satisfied and discharged.

**3. The Long Service Leave (Metalliferous Mining Industry) Act, 1963, as amended by the Decimal Currency Act, 1965, is amended—**

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Amendment  
of Act No.  
48, 1963.

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- (a) (i) by inserting in paragraph (a) of subsection two of section four after the word "subsection" the words "and subsection thirteen of this section";
- (ii) by inserting in subparagraph (ii) of the same paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";

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vice leave.)

- (b) (i) by inserting at the end of subsection three of the same section the following words :—

Provided that where any leave has been given to and taken by the worker pursuant to subsection (3A) of this section, this subsection shall apply to and in respect of so much only of the leave to which the worker has become entitled as has not been so given and taken.

- (ii) by inserting next after the same subsection the following new subsection :—

(3A) If the employer and the worker so agree, a period of long service leave of not less than one month may be given by the employer, and taken by the worker, wholly or partly in advance before the worker has become entitled to any long service leave or to the amount so agreed to be given and taken. No such agreement shall, for the purposes of paragraph (b) of subparagraph (i) of paragraph

(a)

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(a) of subsection two of this section, be deemed to confer on the worker an entitlement to long service leave.

- (c) (i) by inserting in subparagraph (ii) of paragraph (a) of subsection five of the same section after the word "termination" the words "and has not been taken";
- (ii) by inserting in the same paragraph after the words "the worker shall" the words ", subject to subsection thirteen of this section,";
- (iii) by inserting in paragraph (b) of the same subsection after the word "death" the words "and has not been taken";
- (iv) by inserting at the end of the same subsection the following new paragraph :—

(c) On the termination of the services of a worker who had taken any leave pursuant to subsection (3A) of this section his employer may, subject to this paragraph and subsection thirteen of this section, deduct from any remuneration payable on such termination in respect of the worker's services—

- (i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services—ordinary pay for the leave so taken; or
- (ii) if the worker had become so entitled—ordinary pay for the excess, if any, over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuant to this Act by that employer to and taken by the worker.

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The amount so deducted shall not exceed **No. 87, 1967**  
the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
  - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections :—
  - (12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967,

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No. 87, 1967 1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

(b) For the purposes of this subsection, the former employer to whom application for reinstatement is required to be made pursuant to an Act of the Parliament of the Commonwealth of Australia referred to in paragraph (a) of this subsection shall, notwithstanding anything contained in any such Act, be deemed to be and always to have been the employer by whom the member of the naval, military or air forces of the Commonwealth was last employed before the commencement of the service, as such a member, entitling him to apply to be reinstated in civil employment.

(13) (a) In this subsection—

“Award” means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.

“Corporation” means any body corporate formed or incorporated in or outside New South Wales.

“Holding company” and “subsidiary” have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

“Termination” means termination by any person or by any cause.

(b)

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(b) For the purposes of this subsection— No. 87, 1967

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

of another corporation, the first mentioned corporation and that other corporation shall, and no two corporations shall in any other case, be deemed to be related to each other;

(ii) a worker shall be deemed to have transferred from the service of an employer to the service of another employer, only if before, concurrently with or within a period of two months after the termination of his services with the first mentioned employer he entered into a contract of employment with that other employer, and the transfer shall be deemed to have occurred at the time of that termination.

(c) Where before or after the commencement of the Long Service Leave (Amendment) Act, 1967, a worker has transferred from the service of an employer (in this paragraph called the first employer) being a corporation to the service of another employer being a corporation related to the first employer at the time of that transfer, then for the purposes of this section—

(i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transfer; and

(ii)

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No. 87, 1967 - (ii) the period of service which the worker had had with the first employer before the commencement of his services with that other employer (including any service which by reason of a prior transfer or prior transfers or for any other reason he is deemed by this section or, for the purposes of long service leave for such service, he is deemed by any Act or award to have had with the first employer) shall be deemed to be service of the worker with that other employer.

(d) Where before or after the commencement of the Long Service Leave (Amendment) Act, 1967, a worker has entered into a contract of employment with an employer, being a corporation, within a period of twelve months after the completion of an apprenticeship with another employer, being a corporation which at the time of such entry into employment was related to the first mentioned employer, the period of his apprenticeship shall be taken into account for the purpose of ascertaining the period of his service with the first mentioned employer under that contract of employment.

(e) Where the services of a worker with an employer are terminated and that employer is a corporation to which any other corporation is related at the time of that termination, the services of the worker shall not, for the purposes of subsections two and five of this section, be deemed to have been so terminated if he transfers to the employment of any such related corporation.

(f) A worker or his personal representative shall not be entitled by virtue of this subsection to long service leave or payment therefor in respect of any period of service if in respect of that period of service an employer was required by any other provisions of this Act, or by any other Act or any award, to give to the worker any long service

leave

