

**LONG SERVICE LEAVE (AMENDMENT)  
ACT, 1977**

**New South Wales**



ANNO VICESIMO SEXTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 54, 1977.**

**An Act to amend sections 3 and 4 of the Long Service Leave Act, 1955, in connection with the calculation of ordinary pay for the purpose of a payment for long service leave. [Assented to, 24th June, 1977.]**

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*Long Service Leave (Amendment).*

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**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:—

1. This Act may be cited as the "Long Service Leave Short title.  
(Amendment) Act, 1977".

2. The Long Service Leave Act, 1955, is amended in the Amendment  
of Act No.  
38, 1955.  
manner set forth in Schedule 1.

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SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE LONG SERVICE LEAVE ACT, 1955.

(1) (a) Section 3 (1), definition of "Ordinary pay"—

Omit the definition, insert instead :—

"Ordinary pay", in relation to any worker,  
means the sum of—

(a) where the worker is, on the prescribed date, remunerated wholly in relation to an ordinary time rate of pay fixed by the terms of his employment—

(i) the amount of the ordinary remuneration of the worker, as on the prescribed date; or

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

(ii) the average weekly amount of the ordinary remuneration which was earned by him as a worker during that part of the period of 5 years ending on the prescribed date during which he was so remunerated,

whichever is the greater;

(b) where the worker is, on the prescribed date, remunerated otherwise than wholly in relation to an ordinary time rate of pay so fixed—the amount of the average weekly wage which was earned by him as a worker (being the average of the amounts received by him each week under those terms after excluding any amount payable to him in respect of shift work, overtime or other penalty rates) during the period actually worked by him during—

(i) the period of 12 months:  
or

SCHEDULE

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

- (ii) the period of 5 years,  
  
ending on the prescribed date,  
whichever amount of average  
weekly wage is the greater;
  
- (c) the average weekly amount of  
bonuses received by him as a  
worker employed by the person  
who is his employer on the  
prescribed date during—
  - (i) where paragraph (a) (i)  
or (b) (i) applies for the  
purpose of calculating his  
ordinary pay, the period  
of 12 months; or
  
  - (ii) where paragraph (a) (ii)  
or (b) (ii) applies for  
that purpose, the period  
of 5 years,ending on the prescribed date;  
and
  
- (d) where he was, immediately before  
the prescribed date, provided  
with board or lodging by the  
person who is his employer on  
the prescribed date—the cash  
value of that board or lodging.

SCHEDULE

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

## (b) Section 3 (2), (2A), (2B)—

Omit subsection 3 (2), insert instead:—

## (2) For the purposes of—

(a) the definition of “ordinary pay” in subsection (1) and of subsection (2A), “prescribed date”, in relation to a worker—

(i) means, except as provided in subparagraph (ii), the date immediately preceding the date on which that worker enters, or is deemed to have entered upon long service leave or the date of that worker’s death, as the case may require; or

(ii) where the worker has, in relation to any period of long service leave, entered into an agreement authorised by subsection (2B), means, in relation to that period of long service leave, the date of that agreement;

(b) paragraph (a) of that definition, “ordinary remuneration”, in relation to a worker, means the remuneration for that worker’s normal weekly number of hours of work calculated at

SCHEDULE

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

the time rate of pay fixed by the terms of his employment for his work under the terms of his employment reduced by any amount payable to him in respect of shift work, overtime or other penalty rates or, where 2 or more time rates of pay are so fixed, the amount of remuneration for that worker's normal weekly number of hours of work calculated at the higher or highest of those rates and so reduced;

- (c) paragraph (c) of that definition, "bonus", in relation to a worker, means any amount received by that worker under the terms of his employment under any bonus, incentive or other similar scheme, not being an amount taken into consideration in determining the amount of the average weekly wage of that worker referred to in paragraph (b) of that definition; and
- (d) paragraph (d) of that definition, the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of \$15. or such greater sum as may be prescribed instead, a week for board and \$5, or such greater sum as may be prescribed instead, a week for lodging.

SCHEDULE

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

(2A) For the purposes of subsection (2) (b), where no normal weekly number of hours of work is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period of 12 months, or 5 years, as the case may require, ending on the prescribed date.

(2B) Where long service leave has accrued to a worker and the employer of that worker and that worker have agreed that the taking of the long service leave due to him or any part thereof shall be postponed that employer and that worker may agree that, for the purposes of the definition of "ordinary pay" in subsection (1), the prescribed date shall, in relation to that long service leave or part, as the case may be, be the date the agreement was entered into.

## (2) (a) Section 4 (5) (c)—

Omit "ordinary pay for the leave so taken", insert instead "the amount paid to the worker as ordinary pay for the leave so taken".

## (b) Section 4 (5) (c)—

Omit "ordinary pay" where secondly occurring, insert instead "the amount paid to the worker as ordinary pay".

SCHEDULE

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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

(c) Section 4 (5) (c)—

Omit “The amount so deducted shall not exceed 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) Section 4 (5AA)—

After section 4 (5), insert :—

(5AA) Notwithstanding subsection (5) (c), the deduction to be made pursuant to subsection

SCHEDULE



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*Long Service Leave (Amendment).*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE LONG SERVICE LEAVE ACT,  
1955—*continued.*

(5) (c) shall not exceed the amount of ordinary pay that would have been payable for the period of leave or excess leave, as the case may be, had it been taken on the termination of the services of the worker.

(e) Section 4 (6)—

Omit the subsection.

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