

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 12 November, 1959.*

New South Wales



ANNO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. , 1959.

An Act to make further provision with respect to the winding up of companies; for this and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

BE 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. (1) This Act may be cited as the "Companies Short title and citation. (Amendment) Act, 1959".

Companies (Amendment).

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1959.

2. The Companies Act, 1936, as amended by subsequent 5 Acts, is amended— Amendment of Act No. 33, 1936.

10 (a) (i) by omitting from subsection one of section one hundred and seventy-three the words “in respect of the wages or salary (whether or not earned wholly or in part by way of commission, not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman”;

Sec. 173. (Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.)

15 (ii) by inserting at the end of the same subsection the words “and shall be paid in the same order of priority as is prescribed in respect of those debts by those provisions”;

(iii) by inserting next after subsection two of the same section the following new subsection :—

20 (2A) For the purposes of this section, section two hundred and ninety-seven of this Act shall be construed as if the provision for payment of accrued holiday or long service leave remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid. cf. 11 & 12 Geo. 6, c. 38, s. 94(2).

30 (b) (i) by omitting from paragraph (b) of subsection one of section two hundred and ninety-seven the words “fifty pounds” and by inserting in lieu thereof the words “three hundred pounds”;

Sec. 297. (Priorities.)

(ii)

Companies (Amendment).

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

(b1) all remuneration being—

5 (i) remuneration (other than remuneration referred to in subparagraph (ii) of this paragraph) payable to any clerk, commercial traveller, servant, labourer or workman in respect of a holiday or absence from work through illness or other good cause; or

10 (ii) accrued holiday or long service leave remuneration becoming payable to any clerk, commercial traveller, servant, labourer or workman, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) by omitting paragraph (e) of the same subsection;

25 (iv) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) Where any payment has been made—

30 (a) to any clerk, commercial traveller, servant, labourer or workman in the employment of a company on account of wages or salary; or

35 (b) to any such clerk, commercial traveller, servant, labourer or workman or, in the case of his death to any other person in his right, on account of any remuneration referred to in paragraph (b1) of subsection one of this section;

out

Companies (Amendment).

5 out of money advanced by some person for that
purpose, the person by whom the money was
advanced shall in a winding up have a right of
priority in respect of the money so advanced
and paid up to the amount by which the sum
10 in respect of which the clerk, commercial
traveller, servant, labourer or workman, or
other person in his right, would have been
entitled to priority in the winding up has been
diminished by reason of the payment having
15 been made and shall have the same right of
priority in respect of such amount as the clerk,
commercial traveller, servant, labourer or work-
man, or other person in his right, would have
had had the payment not been made.

This subsection shall extend to a payment by
any person pursuant to section one hundred
and seventy-three of this Act.

20 (v) by omitting from subsection four of the same
section the words "the remaining paragraphs"
and by inserting in lieu thereof the words
"paragraphs (b), (b1) and (c)";

(vi) by omitting from the same subsection the words
"paragraph (b) of";

25 (vii) by omitting subsection eight of the same section
and by inserting in lieu thereof the following
subsection :—

(8) For the purposes of this section—

30 (a) the expression "the relevant date"
means—

(i) in the case of a company
ordered to be wound up com-
pulsorily, the date of the
appointment, or first appoint-
ment, of a provisional
35 liquidator, or, if no such
appointment

cf. 11 & 12
Geo. 6, c.
38, s. 319
(8).

Companies (Amendment).

5 appointment was made, the
date of the winding up order,
unless in either case the
company had commenced to be
wound up voluntarily before
that date; and

10 (ii) in any case where sub-
paragraph (i) of this
paragraph does not apply, the
date of the passing of the
resolution for the winding up
of the company;

15 (b) any amount (not being a debt entitled
to priority under any other provision
of this section) payable by way of
allowance or reimbursement under
any contract of employment, or award
or agreement regulating conditions of
20 employment shall be deemed to be
wages in respect of services rendered
to the company at the time when the
amount first became so payable; and

25 (c) the expression "accrued holiday or
long service leave remuneration"
includes, in relation to any person, all
sums which, by virtue of his contract
of employment, or of any award or
agreement regulating conditions of his
employment, or of any enactment are
30 payable on account of the remunera-
tion which would, in the ordinary
course, have become payable to him
in respect of a period of holiday or
long service leave had his employment
with the company continued until he
35 became entitled to be allowed the
holiday or long service leave.

Companies (Amendment).

3. (1) The provisions of section one hundred and seventy-three of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in any case where, before the commencement of this Act, a receiver was appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession was taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, but the provisions of the said section, as in force immediately before that commencement, shall continue in force, and shall apply, in every such case. Savings.

(2) The provisions of section two hundred and ninety-seven of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in the case of a winding up where the relevant date as defined in subsection eight of the said section, as in force immediately before the commencement of this Act, occurred before that commencement, but the provisions of the said section, as so in force, shall continue in force, and shall apply, in every such case.

No. , 1959.

A BILL

To make further provision with respect to the winding up of companies; for this and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

[MR. MANNIX;—4 November, 1959.]

BE 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. (1) This Act may be cited as the "Companies Short title and citation. (Amendment) Act, 1959".

79413 : 96— (2)

Companies (Amendment).

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1959.

2. The Companies Act, 1936, as amended by subsequent 5 Acts, is amended— Amendment of Act No. 33, 1936.

10 (a) (i) by omitting from subsection one of section one hundred and seventy-three the words "in respect of the wages or salary (whether or not earned wholly or in part by way of commission, not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman"; Sec. 173. (Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.)

15 (ii) by inserting at the end of the same subsection the words "and shall be paid in the same order of priority as is prescribed in respect of those debts by those provisions";

(iii) by inserting next after subsection two of the same section the following new subsection :—

20 (2A) For the purposes of this section, section two hundred and ninety-seven of this Act shall be construed as if the provision for payment of accrued holiday or long service leave remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid. cf. 11 & 12 Geo. 6, c. 38, s. 94(2).

30 (b) (i) by omitting from paragraph (b) of subsection one of section two hundred and ninety-seven the words "fifty pounds" and by inserting in lieu thereof the words "three hundred pounds"; Sec. 297. (Priorities.)
(ii)

Companies (Amendment).

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

(b1) all remuneration being—

5 (i) remuneration (other than remuneration referred to in subparagraph (ii) of this paragraph) payable to any clerk, commercial traveller, servant, labourer or workman in respect of a holiday or absence from work through illness or other good cause; or

10 (ii) accrued holiday or long service leave remuneration becoming payable to any clerk, commercial traveller, servant, labourer or workman, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up order or resolution;

15 (iii) by omitting paragraph (e) of the same subsection;

20 (iv) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) Where any payment has been made—

25 (a) to any clerk, commercial traveller, servant, labourer or workman in the employment of a company on account of wages or salary; or

30 (b) to any such clerk, commercial traveller, servant, labourer or workman or, in the case of his death to any other person in his right, on account of any remuneration referred to in paragraph (b1) of subsection one of this section;

35 out

Companies (Amendment).

5 out of money advanced by some person for that
purpose, the person by whom the money was
advanced shall in a winding up have a right of
priority in respect of the money so advanced
and paid up to the amount by which the sum
10 in respect of which the clerk, commercial
traveller, servant, labourer or workman, or
other person in his right, would have been
entitled to priority in the winding up has been
diminished by reason of the payment having
15 been made and shall have the same right of
priority in respect of such amount as the clerk,
commercial traveller, servant, labourer or work-
man, or other person in his right, would have
had had the payment not been made.

This subsection shall extend to a payment by
any person pursuant to section one hundred
and seventy-three of this Act.

20 (v) by omitting from subsection four of the same
section the words "the remaining paragraphs"
and by inserting in lieu thereof the words
"paragraphs (b), (b1) and (c)";

(vi) by omitting from the same subsection the words
"paragraph (b) of";

25 (vii) by omitting subsection eight of the same section
and by inserting in lieu thereof the following
subsection :—

(8) For the purposes of this section—

30 (a) the expression "the relevant date"
means—

cf. 11 & 12
Geo. 6, c.
38, s. 319
(8).

35 (i) in the case of a company
ordered to be wound up com-
pulsorily, the date of the
appointment, or first appoint-
ment, of a provisional
liquidator, or, if no such
appointment

Companies (Amendment).

5 appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

10 (ii) in any case where subparagraph (i) of this paragraph does not apply, the date of the passing of the resolution for the winding up of the company;

15 (b) any amount (not being a debt entitled to priority under any other provision of this section) payable by way of allowance or reimbursement under any contract of employment, or award or agreement regulating conditions of employment shall be deemed to be wages in respect of services rendered to the company at the time when the amount first became so payable; and

20 (c) the expression "accrued holiday or long service leave remuneration" includes, in relation to any person, all sums which, by virtue of his contract of employment, or of any award or agreement regulating conditions of his employment, or of any enactment are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday or long service leave had his employment with the company continued until he became entitled to be allowed the holiday or long service leave.

Companies (Amendment).

3. (1) The provisions of section one hundred and seventy-three of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in any case where, before the commencement of this Act, a receiver was appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession was taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, but the provisions of the said section, as in force immediately before that commencement, shall continue in force, and shall apply, in every such case.

(2) The provisions of section two hundred and ninety-seven of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in the case of a winding up where the relevant date as defined in subsection eight of the said section, as in force immediately before the commencement of this Act, occurred before that commencement, but the provisions of the said section, as so in force, shall continue in force, and shall apply, in every such case.

COMPANIES (AMENDMENT) BILL, 1959.

EXPLANATORY NOTE.

THE objects of this Bill are:—

- (a) to include amongst the preferential debts payable on the winding up of a company certain additional amounts due to employees of the company ;
- (b) to alter the order of priority in which preferential debts are to be paid ;
- (c) to make other amendments of a minor or ancillary character.

COMPANIES (AMENDMENT) BILL, 1958

EXPLANATORY NOTE

The Companies (Amendment) Bill, 1958, is intended to amend the Companies Act, 1956, in relation to the powers of the Government to issue orders under section 109 of that Act. The Bill also amends section 109 of the Companies Act, 1956, to provide for the issue of orders by the Government in relation to the powers of the Government to issue orders under section 109 of that Act.

1958

(Amendment)

(2) The Companies Act 1936 as amended by subsequent Acts and by this Act may be cited as the Companies Act 1936-1959.

(3) The Companies Act 1936 as amended by subsequent Acts is amended—

(a) by inserting at the end of section one hundred and seventy-three the words "in respect of certain debts or not earned wholly or in part by way of commission, not being an existing commission) of any clerk, labourer or chargehand";

No. , 1959.

A BILL

To make further provision with respect to the winding up of companies; for this and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith.

[Mr. MANNIX;—4 November, 1959.]

BE 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. (1) This Act may be cited as the "Companies Short title and citation. (Amendment) Act, 1959".

79413 96— (2)

Companies (Amendment).

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1959.

2. The Companies Act, 1936, as amended by subsequent 5 Acts, is amended— Amendment of Act No. 33, 1936.

10 (a) (i) by omitting from subsection one of section one hundred and seventy-three the words “in respect of the wages or salary (whether or not earned wholly or in part by way of commission, not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman”; Sec. 173. (Payment of certain debts out of assets subject to floating charge in priority to claims under the charge.)

15 (ii) by inserting at the end of the same subsection the words “and shall be paid in the same order of priority as is prescribed in respect of those debts by those provisions”;

(iii) by inserting next after subsection two of the same section the following new subsection:—

20 (2A) For the purposes of this section, section two hundred and ninety-seven of this Act shall be construed as if the provision for payment of accrued holiday or long service leave remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid. cf. 11 & 12 Geo. 6, c. 38, s. 94(2).

25

30

(b) (i) by omitting from paragraph (b) of subsection one of section two hundred and ninety-seven the words “fifty pounds” and by inserting in lieu thereof the words “three hundred pounds”; Sec. 297. (Priorities.)

(ii)

Companies (Amendment).

- (ii) by inserting next after the same paragraph the following new paragraph :—
- (b1) all remuneration being—
- 5 (i) remuneration (other than remuneration referred to in subparagraph (ii) of this paragraph) payable to any clerk, commercial traveller, servant, labourer or workman in respect of a holiday or absence from work through illness or other good cause; or
- 10 (ii) accrued holiday or long service leave remuneration becoming payable to any clerk, commercial traveller, servant, labourer or workman, or in the case of his death to any other person in his right, on the termination of his employment before or by the effect of the winding up order or resolution;
- 15 (iii) by omitting paragraph (e) of the same subsection;
- 20 (iv) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—
- 25 (3) Where any payment has been made—
- (a) to any clerk, commercial traveller, servant, labourer or workman in the employment of a company on account of wages or salary; or
- 30 (b) to any such clerk, commercial traveller, servant, labourer or workman or, in the case of his death to any other person in his right, on account of any remuneration referred to in paragraph (b1) of subsection one of this section;
- 35
- out

Companies (Amendment).

5 out of money advanced by some person for that
 purpose, the person by whom the money was
 advanced shall in a winding up have a right of
 priority in respect of the money so advanced
 and paid up to the amount by which the sum
 10 in respect of which the clerk, commercial
 traveller, servant, labourer or workman, or
 other person in his right, would have been
 entitled to priority in the winding up has been
 diminished by reason of the payment having
 been made and shall have the same right of
 priority in respect of such amount as the clerk,
 commercial traveller, servant, labourer or work-
 man, or other person in his right, would have
 15 had had the payment not been made.

This subsection shall extend to a payment by
 any person pursuant to section one hundred
 and seventy-three of this Act.

20 (v) by omitting from subsection four of the same
 section the words "the remaining paragraphs"
 and by inserting in lieu thereof the words
 "paragraphs (b), (b1) and (c)";

(vi) by omitting from the same subsection the words
 "paragraph (b) of";

25 (vii) by omitting subsection eight of the same section
 and by inserting in lieu thereof the following
 subsection:—

(8) For the purposes of this section—

30 (a) the expression "the relevant date"
 means—

cf. 11 & 12
 Geo. 6, c.
 38, s. 319
 (8).

35 (i) in the case of a company
 ordered to be wound up com-
 pulsorily, the date of the
 appointment, or first appoint-
 ment, of a provisional
 liquidator, or, if no such
 appointment

Companies (Amendment).

5 appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

10 (ii) in any case where subparagraph (i) of this paragraph does not apply, the date of the passing of the resolution for the winding up of the company;

15 (b) any amount (not being a debt entitled to priority under any other provision of this section) payable by way of allowance or reimbursement under any contract of employment, or award or agreement regulating conditions of employment shall be deemed to be
20 wages in respect of services rendered to the company at the time when the amount first became so payable; and

25 (c) the expression "accrued holiday or long service leave remuneration" includes, in relation to any person, all sums which, by virtue of his contract of employment, or of any award or agreement regulating conditions of his
30 employment, or of any enactment are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday or
35 long service leave had his employment with the company continued until he became entitled to be allowed the holiday or long service leave.

3.

Companies (Amendment).

3. (1) The provisions of section one hundred and seventy- Savings.
three of the Companies Act, 1936, as amended by subsequent
Acts and by this Act, shall not apply in any case where,
before the commencement of this Act, a receiver was
5 appointed on behalf of the holders of any debentures of a
company secured by a floating charge, or possession was taken
by or on behalf of those debenture holders of any property
comprised in or subject to the charge, but the provisions of
the said section, as in force immediately before that
10 commencement, shall continue in force, and shall apply, in
every such case.

(2) The provisions of section two hundred and ninety-
seven of the Companies Act, 1936, as amended by
subsequent Acts and by this Act, shall not apply in the
15 case of a winding up where the relevant date as defined in
subsection eight of the said section, as in force immediately
before the commencement of this Act, occurred before that
commencement, but the provisions of the said section, as so
in force, shall continue in force, and shall apply, in every
20 such case.

