

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, 4 December, 1963, A.M.*

New South Wales



ANNO DUODECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1963.

An Act to make further provisions with respect to the entitlement to long service leave of workers in the metalliferous mining industry; to amend the Long Service Leave Act, 1955–1963, and the Industrial Arbitration Act, 1940–1961; 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 "Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Short title,
citation and
commence-
ment.

(2)

Long Service Leave (Metalliferous Mining Industry).

(2) The Long Service Leave Act, 1955, as amended by the Long Service Leave (Amendment) Act, 1963, and by this Act, may be cited as the Long Service Leave Act, 1955-1963.

5 (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(4) The Long Service Leave (Amendment) Act, 1963, is amended by omitting subsection two of section one. ^{Consequential.}

10 2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of
15 this Act and the application of such provision to other persons or circumstances shall not be affected.

3. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,— ^{Interpretation.}

20 “Award” means an award for the time being in force under the Industrial Arbitration Act.

“Employer” means any person employing any worker or workers and includes the Crown.

25 “Industrial agreement” means an industrial agreement for the time being in force under the Industrial Arbitration Act and an agreement filed under section twelve of that Act.

“Industrial Arbitration Act” means the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

30 “Inspector” means an inspector appointed under the Industrial Arbitration Act.

“Metalliferous

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5 "Metalliferous mine" means any place, open cut, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any mineral substance by any mode or method, and any place adjoining thereto on which any product of the metalliferous mine, as hereinbefore defined, is stacked, stored, crushed or otherwise treated and includes—

- 10 (a) any quarry;
- (b) any place where two or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for any mineral substance whether by drilling, boring or any other method; and
- 15 (c) so much of the surface of any place and the buildings, workshops, changehouses, structures and works thereon surrounding or adjacent to the shaft, outlets or site of a metalliferous mine, as hereinbefore defined, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety or welfare of persons employed in, at or about the mine.
- 20
- 25

"Mineral substance" means any substance specified in the Schedule to this Act.

30 "Ordinary pay", in relation to any worker, means remuneration for the worker's normal weekly number of hours of work calculated at his ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

35

"Prescribed" means prescribed by this Act or by regulations.

"Quarry"

“Quarry” means any place, open cut or excavation wherein or whereby any operation is carried on above ground for or in connection with the purpose of obtaining any mineral substance and any place adjoining thereto on which any product of the quarry, as hereinbefore defined, is stacked, stored, crushed or otherwise treated.

“Worker” means a person employed in, at or about a metalliferous mine, whether on salary or wages or piecework rates, or as a member of a butty-gang; and the fact that a person is working under a contract for labour only, or substantially for labour only, or as a lessee of any tools or other implements of production, shall not in itself prevent such person being held to be a worker.

(2) For the purposes of the definition of the term “ordinary pay” in subsection one of this section—

(a) the term “ordinary time rate of pay” in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment means the time rate of pay so fixed for the worker’s work under the terms of his employment, but does not include any amount payable to him in respect of shift work, overtime or other penalty rates, and where two or more time rates of pay are so fixed means the higher or highest of those rates;

(b) where a worker is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner, or where no ordinary time rate of pay is so fixed for a worker's work under the terms of his employment, the worker's ordinary pay shall be deemed to be the average weekly wage earned by him during the period actually worked by him during the twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require. For

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5 For the purposes of this paragraph the average weekly wage earned by a worker shall be the average of the amounts received by him each week under the terms of his employment after excluding any amount payable to him in respect of shift work, overtime or other penalty rates;

10 (c) where during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require, the worker has received under the terms of his employment, any amount under any bonus, incentive or other similar scheme (other than any amount taken into consideration in assessing an average weekly wage in terms of paragraph (b) of this subsection) his ordinary pay shall be increased by a further sum namely the sum which the worker would have received each week in respect of such bonus, incentive or other similar scheme had such amount been paid by equal weekly payments throughout that period of twelve months;

20 (d) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require;

25 (e) the cash value of any board and 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 thirty shillings, or such greater sum as may be prescribed in lieu thereof, a week for board and ten shillings, or such greater sum as may be prescribed in lieu thereof, a week for lodging.

(3)

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(3) Where, by any provision of the Industrial Arbitration Act, a person who is engaged on work in, at or about a metalliferous mine is deemed for the purposes of that Act to be an employee and any other person is deemed for
5 such purposes to be the employer of that employee, then for the purposes of this Act the person so deemed to be an employee shall be deemed to be a worker and the person so deemed to be the employer shall be deemed to be the employer of that worker.

10 4. (1) Except as otherwise provided in this Act, every Long
worker shall be entitled to long service leave on ordinary service
pay in respect of his service with an employer. Service leave.
with the employer before the commencement of this Act as cf. Act No.
15 shall be taken into account for the purposes of this section. 38, 1955,
s. 4.

(2) (a) Subject to paragraph (c) of this subsection, the amount of long service leave to which a worker shall be so entitled shall—

20 (i) in the case of a worker who has completed at least ten years' service with an employer be—

(a) in respect of each ten years' service so completed, three months; and

25 (b) on the termination of the worker's services, in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of three months for ten years' service;

30 (ii) in the case of a worker who has completed with an employer at least five years' service as an adult, and whose services are terminated by the employer for any reason or by the worker on account of illness, incapacity or domestic or other pressing
35 necessity, or by reason of the death of the worker,
be

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be a proportionate amount on the basis of three months for ten years' service (such service to include service with the employer as an adult and otherwise than as an adult).

5 (b) For the purposes of paragraph (a) of this subsection "service as an adult"—

10 (i) in the case of a worker employed to do any work for which the price, rate or wage has been fixed by an award made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts—means the period of service
15 with an employer during which the remuneration applicable to the worker was at a rate not less than the lowest rate fixed under the award or industrial agreement for an adult male or adult female in the same trade, classification or calling as the worker;
20

(ii) in the case of a worker being an apprentice the terms of whose employment are governed by an award applicable only to apprentices—means the
25 period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the rate prescribed by the award covering a journeyman carrying out work in the same trade, classification or calling as the worker;

30 (iii) in the case of a worker employed to do any work for which no price, rate or wage has been fixed by any award or industrial agreement referred to in subparagraph (i) of this paragraph—means the period of service with the employer during which the worker was not less than twenty-one years of
35 age.

(c)

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(c) In the case of a worker whose service with an employer began before the commencement of this Act and whose service would entitle him to long service leave under this section, the amount of long service leave to which such
5 worker shall be entitled shall be the sum of the following amounts—

- (i) an amount calculated on the basis of three months for twenty years' service in respect of the period of his service before such commencement; and
- 10 (ii) an amount calculated on the basis of three months for ten years' service in respect of the period of his service as from such commencement.

(d) (i) A worker entitled under this section to long service leave in respect of a period of service with an
15 employer shall not, except in pursuance of an agreement between the worker and the employer entitling the worker to leave in the nature of long service leave in addition to long service leave under this Act, be entitled otherwise than under the provisions of this Act to leave in the nature of long
20 service leave in respect of that period of service with that employer.

(ii) Where before or after the commencement of this Act—

25 (a) a worker has otherwise than in pursuance of this section been granted by an employer and taken any leave in the nature of long service leave in respect of a period of service with the employer; or

30 (b) payment of the monetary value of leave in the nature of long service leave has been made to the worker or other person entitled thereto,

the leave so granted and taken or the leave in respect of which such payment has been made shall, except where such leave has been taken or payment has been made pursuant to an agreement referred to in subparagraph (i) of this paragraph, be deducted from any amount of long service leave to
35 which such worker is entitled pursuant to this section in respect of that period of service with that employer.

(3)

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(3) Subject to subsection five of this section, where a worker has become entitled to long service leave in respect of his service with an employer, the employer shall give to the worker and the worker shall take the leave—

- 5 (a) as soon as is practicable having regard to the needs of the employer's establishment or, where the employer and the worker agree that the taking of the leave be postponed until an agreed date, as from that date;
- 10 (b) in one continuous period or, if the worker and the employer so agree, in the following separate periods and not otherwise : —
- (i) where the amount of the leave is three months, in two separate periods;
- 15 (ii) where the amount of the leave exceeds three months and does not exceed nineteen and one-half weeks, in two or three separate periods;
- 20 (iii) where the amount of leave exceeds nineteen and one-half weeks, in two, three or four separate periods.

(4) The long service leave provided by this section is exclusive of annual holidays but is inclusive of all other holidays occurring during the taking of any period of long
25 service leave.

(5) (a) Where the services of a worker are terminated otherwise than by his death and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- 30 (ii) accrues to the worker upon such termination, the worker shall be deemed to have entered upon the leave from the date of such termination and the employer shall forthwith pay to the worker in full his ordinary pay for the leave less any amount already paid to the worker in respect
35 of that leave.

(b)

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(b) Where a worker dies and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- 5 (ii) accrues upon termination of the services of the worker by reason of his death,

the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the
10 worker in respect of long service leave less any amount already paid to the worker in respect of that leave.

(6) The ordinary pay to be paid to a worker or his personal representative in respect of any period of long service leave shall be—

- 15 (a) in the case of a worker who enters, or is deemed to have entered, upon a period of long service leave, the ordinary pay payable to the worker at the time he enters, or is deemed to have entered, upon the period of long service leave;

- 20 (b) where a worker dies and any long service leave—

- (i) to which the worker was entitled under this section has not been taken; or
- (ii) accrues under this section upon termination of the services of the worker by reason of
25 his death,

the worker's ordinary pay at the date of his death :

Provided that where by agreement made after long service leave has accrued the taking of the long service leave due to the worker, or any portion of it, is postponed, and the employer
30 and the worker as a condition of the postponement agree that the ordinary pay to be paid in respect of the leave shall be that which would have been payable had the leave been taken at the date the agreement was entered into—

- (a) the ordinary pay shall be as so agreed; and
- 35 (b) paragraphs (b), (c) and (d) of subsection two of section three of this Act shall have effect as if the words "the date on which he enters, or is deemed to

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5 to have entered, upon long service leave, or the date of his death, as the case may require" were omitted therefrom and the words "the date on which the agreement referred to in subsection six of section four of this Act was entered into" were substituted therefor.

(7) Subject to subsection five of this section, where a worker enters upon a period of long service leave, the employer of the worker shall pay to the worker the ordinary pay to be
10 paid to the worker in respect of the period of leave in one of the following ways :—

- (a) in full when the worker commences the period of leave; or
- 15 (b) at the same time as his ordinary pay would have been paid if the worker had remained on duty, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
- 20 (c) in any other way agreed between the employer and the worker,

and the ordinary pay shall become due to the worker accordingly.

(8) Except as provided in subsection five of this section, payment shall not be made by an employer to a
25 worker in lieu of any long service leave or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.

(9) Any amount payable under this section—

- 30 (a) to the personal representative of a worker, shall be recoverable by the personal representative of the worker; or
- (b) to a worker who dies before being paid such amount, shall be recoverable by the personal representative of the worker as payment due to the worker,

35 in like manner as a worker may recover any amount under section twelve of this Act.

(10)

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(10) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken.

(11) For the purposes of this section—

- 5 (a) the service of a worker with an employer means the period during which the worker has served his employer under an unbroken contract of employment, whether or not during the whole of that period he was employed by his employer as a
10 worker, within the meaning of this Act : Provided that a contract of employment shall be deemed not to have been broken by reason only of any interruption or determination thereof, whether occurring before or after the commencement of this Act, if
15 the interruption or determination—
- (i) has been made by the employer with the intention of avoiding any obligation imposed on him by this Act, the Long Service Leave Act, 1955-1963, or by an award
20 made pursuant to section 88c of the Industrial Arbitration Acts, 1940-1955; or
- (ii) has arisen directly or indirectly from an industrial dispute; or
- (iii) has been made by the employer by reason
25 of slackness of trade :

Provided further that the period during which the contract has been so interrupted or determined shall not by reason only of this paragraph be taken into account in calculating the period of service;

- 30 (b) where a worker has entered into a contract of employment with an employer within a period of twelve months after the completion of an apprenticeship with the employer the period of his apprenticeship shall be taken into account for the purpose of
35 ascertaining the period of his service with that employer under that contract of employment;
- (c)

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- 5 (c) where a business, undertaking or establishment or any part thereof has, whether before or after the commencement of this Act, been transmitted from an employer (in this paragraph called the trans-
- 10 mittor) to another employer (in this paragraph called the transmittee) and a person who at the time of the transmission was a worker in the employ of the transmittor in that business, undertaking, establishment or part thereof becomes a worker in the employ of the transmittee—
- (i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transmission; and
- 15 (ii) the period of service which the worker has had with the transmittor or any prior transmittor shall be deemed to be service of the worker with the transmittee.
- 20 In this paragraph “transmission”, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession whether by agreement or operation of law, and “transmitted” has a corresponding meaning;
- 25 (d) any period during which a person served as a member of the naval, military or air forces of the Commonwealth or of the Civil Construction Corps established under the National Security Act 1939, as amended by subsequent Acts, of the Parliament of the Commonwealth, shall be deemed to be service of that person as a worker in the employ of
- 30 the employer by whom that person was last employed before he commenced to serve as such member.

5. (1) Section four of this Act shall not apply to any Exemptions.
 35 worker who is employed by an employer as a member of a cf. Act No.
 class of workers for whom provisions entitling the worker 38, 1955,
 s. 5.
 (whether

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(whether immediately or upon the fulfilment of certain conditions) to leave in the nature of long service leave are made—

- 5 (a) by an award or industrial agreement, whether made before or after the commencement of this Act, and such provisions are more favourable to the worker than those of section four of this Act; or
- (b) by or under any Act, other than this Act or the Industrial Arbitration Act.

10 Where the worker ceases to be a member of a class of workers as aforesaid and at the same time ceases to be in the employment of his employer his service as a member of such class shall not be service for the purposes of section four of this Act.

15 (2) (a) The Industrial Commission of New South Wales may, subject to such conditions as it thinks fit to impose, exempt any employer from the operation of the provisions of this Act relating to long service leave in respect of any workers in any case where it is satisfied that the
20 workers are entitled to benefits under any scheme conducted by or on behalf of the employer, which scheme provides for the granting of long service leave as such to the workers on terms not less favourable than those specified in this Act and that it is in the best interests of the workers that the exemption
25 should be granted.

(b) Any exemption granted to an employer in relation to long service leave pursuant to subsection four of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to the provisions of subsection two of section five of
30 the Long Service Leave Act, 1955-1963, and in force immediately before the commencement of this Act shall, in so far as it relates to workers, be deemed to have been granted pursuant to paragraph (a) of this subsection.

(c) (i) Any exemption granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of any worker who, within a period of three months after the date from which the exemption takes effect, or from
35 the

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the date of commencement of his employment, as the case may require, has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer.

(ii) Any exemption deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of a worker who has before the commencement of this Act by notice in writing given pursuant to subsection (4A) of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to subparagraph (i) of paragraph (c) of subsection two of section five of the Long Service Leave Act, 1955-1963, elected to be subject to the provisions of an award or industrial agreement relating to long service leave, or to the provisions of the Long Service Leave Act, 1955, as amended by subsequent Acts, in lieu of those provided for in the scheme conducted by or on behalf of his employer or who after such commencement has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer within the time within which he would have been entitled to make an election, as provided in the said subparagraph (i), had the said subparagraph continued to apply to workers after the commencement of this Act.

(iii) Notwithstanding any provision of any scheme referred to in subparagraph (i) or (ii) of this paragraph where a worker has given notice in writing as aforesaid, the worker shall be entitled to such benefits under the scheme, other than long service leave, as he would have been entitled to receive had he voluntarily left the service of the employer upon the date on which the notice was given: Except as aforesaid upon the notice being given the rights of any worker to any benefits under the scheme and the obligations under the scheme of the employer and any persons charged with the administration of the scheme in respect of that worker and any person claiming under the worker or in respect of his employment shall cease and determine.

(d)

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(d) (i) The Industrial Commission of New South Wales may vary the terms of any exemption granted or deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection or any
5 condition subject to which the exemption was granted, and may revoke the exemption.

(ii) The said Industrial Commission may, of its own motion, and on application by an industrial union of employers or employees or an employer concerned, shall
10 review the terms of any exemption granted before the commencement of this Act, which is deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection.

Where after such a review the Commission is of the
15 opinion that the benefits under a scheme, the subject of the exemption, are not as favourable as those specified in this Act, or that it is no longer in the best interests of the workers concerned that the exemption should continue to operate, the Commission may vary the terms of such exemption or
20 any condition subject to which the exemption was or was deemed to have been granted, or may revoke the exemption.

6. Nothing contained in this Act shall limit or in any way affect the powers, authorities, duties and functions conferred
25 Wales, or any member thereof, or on a conciliation committee or a conciliation commissioner by or under the Industrial
Arbitration Act in respect of long service leave :
Savings as to powers, etc. cf. Act No. 38, 1955, s. 6.

Provided that in the exercise and performance of such powers, authorities, duties and functions, the Commission or
30 any member thereof or a conciliation committee or a conciliation commissioner shall not in any award or industrial agreement, whether made before or after the commencement of this Act, insert any provisions relating to long service leave for workers unless those provisions are more favourable to
35 the workers than the provisions of section four of this Act or are applicable to persons who are not workers entitled to the long service leave provided by the said section.

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7. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting
out pro-
hibited.
cf. Act No.
38, 1955,
s. 7.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

8. Every employer shall keep or cause to be kept a long service leave record in or to the effect of the form and containing the particulars prescribed.

Records to
be kept by
employer.
cf. Act No.
38, 1955,
s. 8.

9. (1) Every inspector shall have power at any reasonable times—

Powers of
inspectors.
cf. Act No.
38, 1955,
s. 9.

- (a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;
- (b) to require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;
- (d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

10. (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding five hundred pounds.

Penalties
and
offences.
cf. Act No.
38, 1955,
s. 10.

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(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any long service leave record which he is required to keep; or
- 5 (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under
- 10 this Act by an inspector,

shall be liable to a penalty not exceeding five hundred pounds.

(3) Any employer who does any act or thing for the purpose of or which has the effect of in any way whether directly or indirectly—

- 15 (a) avoiding or evading any obligation imposed on him by this Act; or
- (b) defeating, evading, avoiding or preventing the operation of this Act in any respect,

shall be liable to a penalty not exceeding five hundred pounds.

- 20 (4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act
- 25 for such offence accordingly, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

- 11. (1) All penalties imposed by this Act or the regulations made thereunder may be recovered summarily before a court of petty sessions holden before a stipendiary magistrate sitting alone or before an industrial magistrate appointed under the Industrial Arbitration Act.
- 30

Recovery
of
penalties.
cf. Act No.
38, 1955,
s. 11.

Proceedings

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Proceedings for such recovery may be taken by an inspector or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

5 (2) In any such proceedings the stipendiary magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any payment due to a worker under this Act as might have been made in proceedings taken under section twelve of this Act.
10 Such order may be made without motion and shall be a bar to further proceedings under section twelve of this Act in respect of such payment.

(3) In any proceedings under this section the magistrate before whom such proceedings are taken may
15 award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(4) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by
20 him in writing.

12. (1) Any worker may apply to a court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, for an order directing the employer to pay
25 to the worker the full amount of any payment which has become due to the worker under this Act at any time during a period of two years immediately preceding the date of the application.

Recovery of long service leave pay. cf. Act No. 38, 1955, s. 12.

The magistrate may make any order he thinks just in
30 the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(2)

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(2) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or industrial agreement, proceedings under this section may, with the consent in writing of the worker, 5 be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act concerned in the industry to which the award or industrial agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this 10 subsection may be paid to the secretary or other officer and the receipt of the secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the secretary or other officer (less 15 any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

13. (1) Where the provisions of an award or industrial agreement in force immediately before the commencement 20 of this Act entitling workers to long service leave are not more favourable to the workers than the provisions of section four of this Act the first-mentioned provisions shall, as from the commencement of this Act, be deemed to have been omitted from the award or industrial agreement.

Variation
of certain
awards, etc.
cf. Act No.
38, 1955,
s. 13.

25 This subsection shall not apply to the provisions of any award or industrial agreement entitling persons, who are not workers entitled to long service leave under section four of this Act, to long service leave.

(2) Where pursuant to any provision of an award or 30 industrial agreement to which subsection one of this section applies :—

(a) any person before the commencement of this Act became entitled to long service leave in respect of a period of service with an employer and that 35 person is not entitled under this Act to long service leave in respect of that period of service with that employer; or

(b)

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(b) long service leave has before such commencement accrued upon termination of the services of any person with an employer by reason of that person's death,

5 nothing in subsection one of this section shall take away or affect the right of that person or of his personal representative to any payment in respect of such leave.

In relation to such payments all such proceedings may be taken or continued as might have been taken or continued
10 had the said subsection not been enacted.

14. The provisions of the Industrial Arbitration Act and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to
15 appeals from any industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any payment under this Act.

Provisions as to enforcement of awards, etc.

cf. Act No. 38, 1955, s.14.

20 15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

25 (2) Such regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

30

(c)

Long Service Leave (Metalliferous Mining Industry).

- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

16. The Long Service Leave Act, 1955-1963, is amended by inserting in subsection one of section three at the end of the definition of "Worker" the words "but does not include a person who is a worker within the meaning of the Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Amendment of Act No. 38, 1955.
Sec. 3.
(Interpretation.)

SCHEDULE.

Sec. 3.

Alumina	Iron	Radio-active minerals
Antimony	Iron-ore	Rutile
Arsenic	Ironstone	Scheelite
20 Arsenical Pyrites	Lead	Silver
Bauxite	Limestone	Sulphur
Bismuth	Manganese	Tantalum
Cadmium	Mercury	Tin
Chromite	Molybdenite	Titanium
25 Cinnabar	Nickel	Tungsten and its ores
Cobalt	Osmiridium	Vanadium
Columbium	Oxide of Iron	Wolfram
Copper	Pitchblende	Wulfenite
Galena	Platinoid Minerals	Zinc
30 Gold	Platinum	Zircon
Ilmenite	Plumbago	Zirconia

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963

[2s.]

No. , 1963.

A BILL

To make further provisions with respect to the powers, authorities, duties and functions of councils; for this and other purposes to amend the Local Government Act, 1919, the Liquor Act, 1912, the Impounding Act, 1898, and certain other Acts; and for purposes connected therewith.

[MR. HILLS;—10 December, 1963.]

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 "Local Government, Liquor and Impounding (Amendment) Act, 1963".

(2)

Short title
and con-
struction.

Local Government, Liquor and Impounding (Amendment).

(2) The Local Government Act, 1919, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

2. Part III of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part III—
(Alteration
of Cities,
Municipali-
ties, and
Shires.)

5 (a) by inserting next after paragraph (k) of subsection Sec. 21.
one of section twenty-one the following new para- (What may
graph : — be provided
in Gover-
nor's pro-
clamation.)

10 (ki) where part of an area is, after the commence-
ment of the Local Government, Liquor
and Impounding (Amendment) Act, 1963,
or has been, before that commencement but
after the first day of January, one thousand
nine hundred and sixty-three, added to
15 another area, and the Governor is of
opinion that the circumstances so warrant,
appoint to the council of the area to which
the part is, or has been, added such number
of persons as he thinks fit to represent
20 the persons who have the requisite quali-
fication for enrolment in respect of the
added part until the date of the next tri-
ennial ordinary election for the council of
the area to which the part is, or has been,
added;

25 (b) by inserting next after subsection (1A) of the same
section the following new subsection : —

30 (1B) (a) Any person appointed to the council
pursuant to paragraph (ki) of subsection one of
this section shall for the purposes of this Act be
deemed to be an alderman or councillor, as the
case may be, of the council to which he is appointed.

(b)

Local Government, Liquor and Impounding (Amendment).

(b) If an extraordinary vacancy occurs in the office of any person so appointed, the Governor may by proclamation appoint another person to fill the vacant office.

5 3. (1) Part IV of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part IV—
(The Coun-
cils of
Cities,
Municipali-
ties, and
Shires.)

10 (a) (i) by omitting from subsection five of section twenty-three the word "Any" and by inserting in lieu thereof the words "Subject to paragraph (ki) of subsection one of section twenty-one of this Act, any";

Sec. 23.
(Composi-
tion of
city and
municipal
councils.)

(ii) by inserting at the end of the same section the following new subsection :—

15 (8) In the application of subsection (1A), (1B) or two of this section to any council regard shall not be had to any person holding office as a member of such council by virtue of any appointment made pursuant to paragraph (ki) of subsection one of section twenty-one of this Act.

20 (b) (i) by omitting from subsection five of section twenty-four the word "Any" and by inserting in lieu thereof the words "Subject to paragraph (ki) of subsection one of section twenty-one of this Act, any";

Sec. 24.
(Composi-
tion of
shire
councils.)

25 (ii) by inserting at the end of the same section the following new subsection :—

(8) In the application of subsection (1A), (1B) or two of this section to any council regard shall not be had to any person holding office

Local Government, Liquor and Impounding (Amendment).

office as a member of such council by virtue of any appointment made pursuant to paragraph (ki) of subsection one of section twenty-one of this Act.

- 5 (c) by inserting in paragraph (d) of subsection one of section twenty-eight after the word "Australia" the words "or of the Local Government Electricity Association of New South Wales"; Sec. 28. (Travelling expenses.)
- 10 (d) (i) by omitting subsection five of section twenty-nine; Sec. 29. (Allowance for the Lord Mayor of Sydney.)
- (ii) by omitting from subsection six of the same section the words "other than the City of Sydney".

(2) The amendments made by paragraph (d) of subsection one of this section shall not affect the allowance payable by the Council of the City of Sydney to the Lord Mayor in respect of the year one thousand nine hundred and sixty-three.

4. Part VI of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part VI—
(Adminis-
tration.)

- 20 (a) by inserting at the end of section eighty-nine the following new subsection :— Sec. 89. (Deputy clerks.)
- 25 (2) Where, after the commencement of the Local Government, Liquor and Impounding (Amendment) Act, 1963, a vacancy occurs in the position of deputy clerk the council shall employ in that position a deputy clerk who holds the certificate of council clerk as prescribed :
- 30 Provided that the Minister on the occurrence of a vacancy as aforesaid may grant the council an exemption from this provision.
- (b) by inserting in section ninety-three after the word "clerk" wherever occurring the words "or deputy clerk". Sec. 93. (Failure to appoint.)

Local Government, Liquor and Impounding (Amendment).

5. Part VII of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part VII—
(Finance.)

- 5 (a) (i) by inserting in subsection two of section one hundred and eighteen after the word "Cumberland" the words "and in any municipality or shire to which the provisions of this subsection have been extended pursuant to subsection three of this section";
- 10 (ii) by inserting in the same subsection after the word "municipality" where secondly and thirdly occurring the words "or shire, as the case may be";
- 15 (iii) by omitting from paragraph (b) of the same subsection the words "adjoining such municipality (if any)" and by inserting in lieu thereof the words "(if any) adjoining such municipality or shire, as the case may be";
- 20 (iv) by inserting in paragraph (a) of subsection three of the same section after the word "Cumberland" the words "or in any shire the area of which is wholly within the County of Cumberland or Northumberland";
- 25 (v) by omitting from the same subsection the word "municipality" wherever, except where firstly, occurring and by inserting in lieu thereof the word "area";
- 30 (vi) by omitting from subsection four of the same section the words "in a municipality";
- (b) by omitting from subsection two of section one hundred and fifty-eight the words "as there are in the period in respect of which such calculation is made" and by inserting in lieu thereof the words "as have elapsed between the due date and the date of payment";

Sec. 118.
(General
rates in
municipalities
and shires.)

Sec. 158.
(Overdue
rates—
extra
charge.)

(c)

Local Government, Liquor and Impounding (Amendment).

- (c) by omitting from subsection (2A) of section one hundred and seventy-four the words "three years" and by inserting in lieu thereof the words "five years".

Sec. 174.
(Limited overdrafts.)

5 6. Part IX of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part IX—
(Public
Roads.)

- (a) by inserting next after section 249D the following new section :—

New sec.
249E.

10 249E. (1) If any building, excavation or place near any public road is dangerous to persons or property in the neighbourhood of or in such public road the council may order the occupier of the land on which such building, excavation or place is situated or, if there is no occupier, the owner of such land to erect or instal, to the satisfaction of the council and within such time, not being less than seven days, as may be specified in the order, such hoards, fences, lights and other appliances as are necessary to protect those persons or that property.

Charge for
hoards,
fences,
lights and
other ap-
pliances
placed
around
dangerous
place.

20 (2) If within the period specified in the order the occupier or owner to whom the order was given does not carry out to the satisfaction of the council the work required by the order, the council may carry out the work and recover as a debt its expenses in doing so from the occupier or owner, as the case may be, in any court of competent jurisdiction.

- 30 (b) (i) by inserting in subsection five of section 251A after the words "motor by-pass" the words "or, where any other words or symbols are prescribed, such other words or symbols";

Sec. 251A.
(By-passes
for motor
vehicles.)

(ii)

Local Government, Liquor and Impounding (Amendment).

5 (ii) by inserting at the end of subsection six of the same section the words "and alter the wording on the notice as may be necessary so that it bears the words and symbols from time to time prescribed under subsection five of this section";

(c) by inserting at the end of section two hundred and sixty-seven the following new subsection : — Sec. 267.
(Removal
of obstruc-
tions.)

10 (10) Any proceedings for the enforcement of an order made under this section in respect of any obstruction or encroachment that forms part of any licensed premises within the meaning of section 40c of the Liquor Act, 1912, as amended by subsequent Acts, shall be commenced or taken under
15 and in accordance with the provisions of the said section 40c.

(d) by inserting next after section 267A the following new section : — New
sec. 267B.

20 267B. (1) Where any vehicle, or the remains of any vehicle, standing on a public road in any area is or are a danger or obstruction to traffic, or has been abandoned, and the council of that area has received a notice in writing signed by a member
25 of the police force of or above the rank of sergeant certifying that in his opinion such vehicle or remains is or are not a motor vehicle within the meaning of Regulation 58 of the Regulations for Motor Traffic made under the Motor Traffic Act, 1909, as amended by subsequent Acts, the council
30 may seize and take charge of and remove or tow away or cause to be removed or towed away such vehicle or remains.

35 (2) Any such vehicle or remains may, at the council's discretion, be either kept at any place set apart by the council for the purpose or, if the council is of the opinion that the vehicle or remains is or are of no value, destroyed or otherwise disposed of.

(3)

Local Government, Liquor and Impounding (Amendment).

(3) Where a vehicle or the remains of any vehicle is or are kept at any place referred to in subsection two of this section then—

- 5 (a) application for its or their release may be made by the owner of the vehicle or remains or by a person acting for or on behalf of such owner to the person in charge of the place at which the vehicle or the remains is or are kept;
- 10 (b) the applicant shall furnish evidence as to the ownership of the vehicle or remains to the satisfaction of such person in charge;
- (c) the vehicle or the remains shall not be released from custody unless—
 - 15 (i) such person in charge is satisfied that the applicant is the owner of the vehicle or remains or that he possesses authority to act for or on behalf of such owner;
 - 20 (ii) the appropriate amount fixed by the council as the amount payable in respect of the seizure, taking charge, removal, towing away, keeping or releasing of the vehicle or remains
 - 25 has been paid to such person in charge;
 - (iii) the applicant has signed a receipt for the delivery of the vehicle or remains on a form supplied to him
 - 30 by such person in charge.

(4) If within a period of three months after the date upon which the vehicle or remains has or have been seized the owner or person acting for or on behalf of the owner is not entitled under subsection three of this section to have the vehicle or remains released from custody, the vehicle or remains may, after the expiration of such period, be destroyed or otherwise disposed of in accordance with the directions of the council.

(e)

Local Government, Liquor and Impounding (Amendment).

(e) by inserting at the end of subsection one of section two hundred and seventy-seven the following new paragraph :—

Sec. 277.
(Ordinances.)

5 (ff) prescribing the position and the materials,
height, size, design and appearance of
notices erected near by-passes for motor
vehicles and the words and symbols to be
borne by such notices, and without limiting
10 the generality of the foregoing, for this
purpose to adopt wholly or partially or by
reference any of the standard rules recom-
mended or adopted by the Standards
Association of Australia relating to the
matter with which the ordinance deals.

15 7. (1) Part XI of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part XI—
(Building
Regulation.)

(a) (i) by inserting at the end of subsection one of section three hundred and nine the following new paragraph :—

Sec. 309.
(Proclama-
tion of
residential
districts.)

20 Notwithstanding that an application has not
been made by the council the Governor, on
the recommendation of the Minister, may, by
proclamation—

(i) alter any residential district by taking
land out of the residential district; and
25 (ii) in respect of any land so taken out,
exercise any of the powers under this
section.

(ii) by omitting from paragraph (a) of subsection
(1c) of the same section the word "Where"
and by inserting in lieu thereof the words
30 "Before the Minister recommends the altera-
tion of a residential district or where";
(iii)

Local Government, Liquor and Impounding (Amendment).

- 5 (iii) by inserting at the end of paragraph (b) of the same subsection the words "and where the proposal is for the alteration of a residential district without an application for the alteration having been made by the council of the area concerned, such council may also object in the manner prescribed";
- 10 (b) by omitting from the heading to Division 4B the words "*City of Sydney*" and by inserting in lieu thereof the words "*Cities of Sydney, Newcastle and Greater Wollongong*"; Division 4B. (Heading.)
- 15 (c) (i) by omitting from subsection one of section 317C the words "the City of Sydney and the Council of such City" and by inserting in lieu thereof the words "the Cities of Sydney, Newcastle and Greater Wollongong and the Councils of those Cities and to and in respect of any area to which it is applied by the Governor by proclamation and to the council of that area"; Sec. 317C. (Application.)
- 20 (ii) by omitting subsection two of the same section;
- (d) (i) by omitting from subsection two of section 317M the word "four" and by inserting in lieu thereof the word "five"; Sec. 317M. (Appointment.)
- 25 (ii) by inserting at the end of the same subsection the following new paragraphs :—
- 30 (e) one member, who shall be an officer of a council and shall be selected by the Governor from a panel of four such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales.

The

Local Government, Liquor and Impounding (Amendment).

The member appointed under paragraph (e) of this subsection shall not act on an appeal or reference to the board where the Council of the City of Sydney is the council concerned.

- (e) (i) by omitting from subsection three of section Sec. 317Q. 317Q the word "ten" and by inserting in lieu (Panel.) thereof the word "fourteen";

- (ii) by inserting at the end of the same subsection the following new paragraph :—

(e) four members, who shall be officers of councils and shall be selected by the Governor from a panel of eight such officers nominated jointly as prescribed by the governing bodies of the Local Government Association of New South Wales and the Shires Association of New South Wales.

- (f) by omitting from subsection three of section three Sec. 319. hundred and nineteen the words "four hundred (Additional provisions re ordin- ances.) pounds" and by inserting in lieu thereof the words "one thousand pounds".

(2) (a) For the purposes only of the appointment of the member of the Cumberland, Newcastle and Wollongong Board of Appeal referred to in paragraph (e) of subsection two of section 317M of the Principal Act, as amended by this Act, and of the members of the Cumberland, Newcastle and Wollongong Board of Appeal Panel referred to in paragraph (e) of subsection three of section 317Q of the Principal Act, as amended by this Act, the amendments made by paragraphs (d) and (e) of subsection one of this section shall commence upon the day upon which Her Majesty's assent to this Act is signified.

(b) Except as provided in paragraph (a) of this subsection, the amendments made by paragraphs (b), (c), (d) and (e) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(c)

Local Government, Liquor and Impounding (Amendment).

(c) The members of the Cumberland, Newcastle and Wollongong Board of Appeal and the Cumberland, Newcastle and Wollongong Board of Appeal Panel first appointed after the commencement of this Act pursuant to paragraph (e) of subsection two of section 317M, or paragraph (e) of subsection three of section 317Q, of the Principal Act, as amended by this Act, shall—

- (i) take office as such members upon the day appointed pursuant to paragraph (b) of this subsection;
- 10 (ii) subject to Division 4C of Part XI of the Principal Act hold office until the fourth day of August, one thousand nine hundred and sixty-six; and
- (iii) be eligible for reappointment.

8. Part XII of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part XII—
(Town
Planning.)

- 15 (a) by omitting from section three hundred and twenty-eight the words “may either” and by inserting in lieu thereof the words “may, if the council so agrees, either”; Sec. 328. (Certain alternative conditions.)
- 20 (b) by inserting at the end of subsection one of section three hundred and thirty-one the words “by the owner of the land or by some person authorised by him in writing”; Sec. 331. (Decisions on applications, and notices to applicants.)
- (c) by omitting the proviso to subsection one of section three hundred and thirty-three. Sec. 333. (Subjects for consideration re sub-divisions.)

Local Government, Liquor and Impounding (Amendment).

9. Part XIV of the Principal Act is amended—

Amendment
of Act No.
41, 1919.

Part XIV—
(Water,
Sewerage,
Drainage, or
Electricity
Works.)

(a) by omitting from paragraph (a) of subsection one
of section 392B the words “by a council”;

Sec. 392B.
(Connec-
tions to
water
mains.)

5 (b) by omitting from subparagraph (i) of paragraph
(a) of subsection one of section 396A the words
“by a council”.

Sec. 396A.
(Connec-
tions to
sewer
mains.)

10. Part XVII of the Principal Act is amended by insert-
ing at the end of paragraph (a) of subsection four of section
four hundred and eighteen the words “but it shall not be
necessary to submit any such proposal to the Governor or
obtain the Governor’s approval to any such agreement where
the council proposes to extend its electricity trading under-
taking into the area of another council for the purpose only
of supplying electricity to land having a frontage to a public
road in which the boundary between the areas of those
councils lies or of lighting any such public road”.

Amendment
of Act No.
41, 1919.
Part XVII—
(Trading.)
Sec. 418.
(What is a
trading
under-
taking.)

11. Part XVIII of the Principal Act is amended by
omitting the proviso to section four hundred and thirty-eight
and by inserting in lieu thereof the following proviso :—

Amendment
of Act No.
41, 1919.

Part XVIII—
(Impound-
ing.)

20 Provided that this section shall not authorise the
destruction of any goat which is clearly branded or
which has around its neck a collar with the name and
address of its owner legibly engraved thereon.

Sec. 438.
(When goats
or swine
may be
destroyed.)

Local Government, Liquor and Impounding (Amendment).

12. Part XXIII of the Principal Act is amended by inserting at the end of subsection two of section five hundred and six the words “, where such approval is necessary under that subsection”.

Amendment
of Act No.
41, 1919.
Part XXIII—
(Miscel-
laneous
Powers.)
Sec. 506.
(Extension
of water,
gas,
electricity,
sewerage,
and other
works out-
side area.)

13. Part XXIV of the Principal Act is amended—

Amendment
of Act No.
41, 1919.
Part XXIV—
(Ancillary
Powers.)

(a) (i) by inserting at the end of subsection one of section five hundred and twenty-four the following new paragraph :—

Sec. 524.
(Entry and
other
powers.)

(g) in and upon any land to which this paragraph extends open any ground, dig trenches and sink test holes or bores for the purpose of ascertaining whether the land contains any deposits of materials necessary for improving or maintaining any public place under the control of the council or for the carrying out, alteration, repair, improvement or renewal of any works or undertakings authorised by or under this Act, and the extent of such deposits, and dig, raise, gather, take and carry away samples of any such materials for analysis and testing.

(ii) by omitting from subsection two of the same section the word, symbols and letter “Paragraph (f)” and by inserting in lieu thereof the words, symbols and letters “Paragraphs (f) and (g)”;

(iii)

Local Government, Liquor and Impounding (Amendment).

- (iii) by omitting from paragraph (a) of the same subsection the words "the paragraph" and by inserting in lieu thereof the word, symbols and letter "paragraph (f)";
- 5 (iv) by inserting next after paragraph (a) of the same subsection the following new paragraph : —
 - (ai) paragraph (g) of subsection one of this section shall not be deemed to extend to the site or curtilage of a dwelling-house, or to any part of the land which is within fifty feet of any building of a permanent character, bridge, dam, jetty, or other like structure, or which is within two hundred yards of any dwelling-house;
- 10
- (v) by omitting from paragraph (e) of the same subsection the words "the council" where firstly occurring and by inserting in lieu thereof the words "in the exercise of the powers conferred by paragraph (f) of subsection one of this section, the council";
- 15
- 20 (vi) by omitting from subsection four of the same section the words "or hole" and by inserting in lieu thereof the words "trench, hole or bore";
- 25
- (b) (i) by omitting subsection one of section 530A; Sec. 530A.
(Power to delegate.)
- (ii) by omitting from subsection six of the same section the words "or by reason of the revocation by the Governor of the proclamation applying this section to the area and the council concerned".
- 30

Local Government, Liquor and Impounding (Amendment).

14. Part XXIX of the Principal Act is amended by omitting from subsection nine of section five hundred and sixty-three the words “, and to the Minister,”.

Amendment
of Act No.
41, 1919.

Part XXIX
—(County
Councils.)

Sec. 563.
(Corporate
body.)

15. Part XXX of the Principal Act is amended by inserting next after section 625A the following new section : —

Amendment
of Act No.
41, 1919.

Part XXX—
(Supple-
mentary.)

New sec.
625B.

625B. (1) In any proclamation, notification, ordinance, order, direction or notice made or given or purporting to be made or given under this Act with respect to the boundaries of any city, municipality, shire, county district, ward, riding, urban area or residential district or with respect to any proposal relating to any such boundaries, the boundaries of the land affected may be defined by metes and bounds or may be defined or indicated by reference to maps or plans signed by the Principal Surveyor, Department of Public Works, and deposited and catalogued in the Department of Public Works at Sydney.

Delineation
of local
government
boundaries
by reference
to maps.

(2) Where the Minister certifies in writing to the Governor that it is desirable that the existing boundaries of any city, municipality, shire, county district, ward, riding, urban area, or residential district be described by reference to different surveys, definitions of land boundaries, or by reference to boundaries shown on plans or maps deposited and catalogued in the Department of Public Works, the Governor may by proclamation redescribe such boundaries accordingly.

On and from the publication in the Gazette of the proclamation the boundaries of the city, municipality, shire, county district, ward, riding, urban area or residential district, as the case may be, shall be as so redefined.

(3)

Long Service Leave (Metalliferous Mining Industry).

7. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting out prohibited.
cf. Act No. 38, 1955, s. 7.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

8. Every employer shall keep or cause to be kept a long service leave record in or to the effect of the form and containing the particulars prescribed.

Records to be kept by employer.
cf. Act No. 38, 1955, s. 8.

9. (1) Every inspector shall have power at any reasonable times—

Powers of inspectors.
cf. Act No. 38, 1955, s. 9.

(a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;

(b) to require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act;

(c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;

(d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

10. (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding five hundred pounds.

Penalties and offences.
cf. Act No. 38, 1955, s. 10.

Long Service Leave (Metalliferous Mining Industry).

(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any long service leave record which he is required to keep; or
- 5 (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under
- 10 this Act by an inspector,

shall be liable to a penalty not exceeding five hundred pounds.

(3) Any employer who does any act or thing for the purpose of or which has the effect of in any way whether directly or indirectly—

- 15 (a) avoiding or evading any obligation imposed on him by this Act; or
- (b) defeating, evading, avoiding or preventing the operation of this Act in any respect,

shall be liable to a penalty not exceeding five hundred pounds.

- 20 (4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act
- 25 for such offence accordingly, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

- 11. (1) All penalties imposed by this Act or the regula- Recovery of penalties.
tions made thereunder may be recovered summarily before
30 a court of petty sessions holden before a stipendiary magistrate cf. Act No. 38, 1955, s. 11.
sitting alone or before an industrial magistrate appointed
under the Industrial Arbitration Act.

Proceedings

Long Service Leave (Metalliferous Mining Industry).

Proceedings for such recovery may be taken by an inspector or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

- 5 (2) In any such proceedings the stipendiary magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any payment due to a worker under this Act as might have been made in proceedings taken under section twelve of this Act.
10 Such order may be made without motion and shall be a bar to further proceedings under section twelve of this Act in respect of such payment.

- (3) In any proceedings under this section the magistrate before whom such proceedings are taken may
15 award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

- (4) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by
20 him in writing.

12. (1) Any worker may apply to a court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, for an order directing the employer to pay
25 to the worker the full amount of any payment which has become due to the worker under this Act at any time during a period of two years immediately preceding the date of the application.

Recovery of long service leave pay. cf. Act No. 38, 1955, s. 12.

- The magistrate may make any order he thinks just in
30 the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(2)

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(2) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or industrial agreement, proceedings under this section may, with the consent in writing of the worker, 5 be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act concerned in the industry to which the award or industrial agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this 10 subsection may be paid to the secretary or other officer and the receipt of the secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the secretary or other officer (less 15 any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

13. (1) Where the provisions of an award or industrial agreement in force immediately before the commencement 20 of this Act entitling workers to long service leave are not more favourable to the workers than the provisions of section four of this Act the first-mentioned provisions shall, as from the commencement of this Act, be deemed to have been omitted from the award or industrial agreement.

25 This subsection shall not apply to the provisions of any award or industrial agreement entitling persons, who are not workers entitled to long service leave under section four of this Act, to long service leave.

(2) Where pursuant to any provision of an award or 30 industrial agreement to which subsection one of this section applies : —

(a) any person before the commencement of this Act became entitled to long service leave in respect of a period of service with an employer and that 35 person is not entitled under this Act to long service leave in respect of that period of service with that employer; or

(b)

Variation
of certain
awards, etc.
cf. Act No.
38, 1955,
s. 13.

Long Service Leave (Metalliferous Mining Industry).

- (b) long service leave has before such commencement accrued upon termination of the services of any person with an employer by reason of that person's death,

5 nothing in subsection one of this section shall take away or affect the right of that person or of his personal representative to any payment in respect of such leave.

In relation to such payments all such proceedings may be taken or continued as might have been taken or continued
10 had the said subsection not been enacted.

14. The provisions of the Industrial Arbitration Act and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to
15 appeals from any industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any payment under this Act.

Provisions
as to en-
forcement
of awards,
etc.

cf. Act No.
38, 1955,
s.14.

20 15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

25 (2) Such regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
(b) take effect from the date of publication or from a
30 later date to be specified in the regulations; and
(c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

16. The Long Service Leave Act, 1955-1963, is amended by inserting in subsection one of section three at the end of the definition of "Worker" the words "but does not include a person who is a worker within the meaning of the Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Amendment
of Act No.
38, 1955.
Sec. 3.
(Interpre-
tation.)

SCHEDULE.

Sec. 3.

Alumina	Iron	Radio-active minerals
Antimony	Iron-ore	Rutile
Arsenic	Ironstone	Scheelite
20 Arsenical Pyrites	Lead	Silver
Bauxite	Limestone	Sulphur
Bismuth	Manganese	Tantalum
Cadmium	Mercury	Tin
Chromite	Molybdenite	Titanium
25 Cinnabar	Nickel	Tungsten and its ores
Cobalt	Osmiridium	Vanadium
Columbium	Oxide of Iron	Wolfram
Copper	Pitchblende	Wulfenite
Galena	Platinoid Minerals	Zinc
30 Gold	Platinum	Zircon
Ilmenite	Plumbago	Zirconia

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963

[2s.]

LONG SERVICE LEAVE (METALLIFEROUS MINING INDUSTRY) BILL, 1963.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to confer on certain workers in the metalliferous mining industry an entitlement to long service leave at the rate of three months for each ten years of service, and at a corresponding proportionate rate where the worker has completed at least five years' service with an employer and has in certain circumstances ceased to be employed by that employer;
- (b) to preserve the powers of the Industrial Commission to—
 - (i) prescribe by award long service leave benefits where such benefits are more favourable to the worker than those provided by the Bill; and
 - (ii) grant exemptions to employers on the basis on which exemptions from the long service leave provisions of awards were granted under section 88C of the Industrial Arbitration Act, 1940, as amended by subsequent Acts;
- (c) to make other provisions ancillary to and supplemental to the foregoing.

PROOF

No. , 1963.

A BILL

To make further provisions with respect to the entitlement to long service leave of workers in the metalliferous mining industry; to amend the Long Service Leave Act, 1955-1963, and the Industrial Arbitration Act, 1940-1961; and for purposes connected therewith.

[MR. LANDA;—13 November, 1963.]

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 "Long Service Leave (Metalliferous Mining Industry) Act, 1963".

(2)

Short title,
citation and
commence-
ment.

Long Service Leave (Metalliferous Mining Industry).

(2) The Long Service Leave Act, 1955, as amended by the Long Service Leave (Amendment) Act, 1963, and by this Act, may be cited as the Long Service Leave Act, 1955-1963.

5 (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(4) The Long Service Leave (Amendment) Act, 1963, is amended by omitting subsection two of section one. ^{Consequential.}

10 2. This Act shall be read and construed subject to the ^{Construction.} Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of
15 this Act and the application of such provision to other persons or circumstances shall not be affected.

3. (1) In this Act, unless the context or subject-matter ^{Interpretation.} otherwise indicates or requires,—

20 “Award” means an award for the time being in force under the Industrial Arbitration Act.

“Employer” means any person employing any worker or workers and includes the Crown.

25 “Industrial agreement” means an industrial agreement for the time being in force under the Industrial Arbitration Act and an agreement filed under section twelve of that Act.

“Industrial Arbitration Act” means the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

30 “Inspector” means an inspector appointed under the Industrial Arbitration Act.

“Metalliferous

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5 “Metalliferous mine” means any place, open cut, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any mineral substance by any mode or method, and any place adjoining thereto on which any product of the metalliferous mine, as hereinbefore defined, is stacked, stored, crushed or otherwise treated and includes—

- 10 (a) any quarry;
- (b) any place where two or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for any mineral substance whether by drilling, boring or any other method; and
- 15 (c) so much of the surface of any place and the buildings, workshops, changehouses, structures and works thereon surrounding or adjacent to the shaft, outlets or site of a metalliferous mine, as hereinbefore defined, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety or welfare of persons employed in, at or about the mine.
- 20
- 25

“Mineral substance” means any substance specified in the Schedule to this Act.

30 “Ordinary pay”, in relation to any worker, means remuneration for the worker’s normal weekly number of hours of work calculated at his ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

35

“Prescribed” means prescribed by this Act or by regulations.

“Quarry”

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5 “Quarry” means any place, open cut or excavation wherein or whereby any operation is carried on above ground for or in connection with the purpose of obtaining any mineral substance and any place adjoining thereto on which any product of the quarry, as hereinbefore defined, is stacked, stored, crushed or otherwise treated.

10 “Worker” means a person employed in, at or about a metalliferous mine, whether on salary or wages or piecework rates, or as a member of a butt-gang; and the fact that a person is working under a contract for labour only, or substantially for labour only, or as a lessee of any tools or other implements of production, shall not in itself prevent such person
15 being held to be a worker.

(2) For the purposes of the definition of the term “ordinary pay” in subsection one of this section—

20 (a) the term “ordinary time rate of pay” in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment means the time rate of pay so fixed for the worker’s work under the terms of his employment, but does not include any amount payable to him in respect of shift work, overtime or other
25 penalty rates, and where two or more time rates of pay are so fixed means the higher or highest of those rates;

30 (b) where a worker is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner, or where no ordinary time rate of pay is so fixed for a worker’s work under the terms of his employment, the worker’s ordinary pay shall be
35 deemed to be the average weekly wage earned by him during the period actually worked by him during the twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his
40 death, as the case may require. For

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5 For the purposes of this paragraph the average weekly wage earned by a worker shall be the average of the amounts received by him each week under the terms of his employment after excluding any amount payable to him in respect of shift work, overtime or other penalty rates;

10 (c) where during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require, the worker has received under the terms of his employment, any amount under any bonus, incentive or other similar scheme (other than any amount taken into consideration in assessing an average weekly wage in terms of paragraph (b) of this subsection) his ordinary pay shall be increased by 15 a further sum namely the sum which the worker would have received each week in respect of such bonus, incentive or other similar scheme had such amount been paid by equal weekly payments throughout that period of twelve months;

20 (d) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require; 30

35 (e) the cash value of any board and 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 thirty shillings, or such greater sum as may be prescribed in lieu thereof, a week for board and ten shillings, or such greater sum as may be prescribed in lieu thereof, a week for lodging.

(3)

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(3) Where, by any provision of the Industrial Arbitration Act, a person who is engaged on work in, at or about a metalliferous mine is deemed for the purposes of that Act to be an employee and any other person is deemed for such purposes to be the employer of that employee, then for the purposes of this Act the person so deemed to be an employee shall be deemed to be a worker and the person so deemed to be the employer shall be deemed to be the employer of that worker.

10 4. (1) Except as otherwise provided in this Act, every worker shall be entitled to long service leave on ordinary pay in respect of his service with an employer. Service with the employer before the commencement of this Act as well as service with the employer after such commencement shall be taken into account for the purposes of this section.

Long
service
leave.
cf. Act No.
38, 1955,
s. 4.

(2) (a) Subject to paragraph (c) of this subsection, the amount of long service leave to which a worker shall be so entitled shall—

20 (i) in the case of a worker who has completed at least ten years' service with an employer be—

(a) in respect of each ten years' service so completed, three months; and

25 (b) on the termination of the worker's services, in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of three months for ten years' service;

30 (ii) in the case of a worker who has completed with an employer at least five years' service as an adult, and whose services are terminated by the employer for any reason or by the worker on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the worker,
35 be

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be a proportionate amount on the basis of three months for ten years' service (such service to include service with the employer as an adult and otherwise than as an adult).

5 (b) For the purposes of paragraph (a) of this subsection "service as an adult"—

10 (i) in the case of a worker employed to do any work for which the price, rate or wage has been fixed by an award made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts—means the period of service 15 with an employer during which the remuneration applicable to the worker was at a rate not less than the lowest rate fixed under the award or industrial agreement for an adult male or adult female in the same trade, classification or calling as the worker; 20

(ii) in the case of a worker being an apprentice the terms of whose employment are governed by an award applicable only to apprentices—means the 25 period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the rate prescribed by the award covering a journeyman carrying out work in the same trade, classification or calling as the worker;

30 (iii) in the case of a worker employed to do any work for which no price, rate or wage has been fixed by any award or industrial agreement referred to in subparagraph (i) of this paragraph—means the period of service with the employer during which the worker was not less than twenty-one years of 35 age.

(c)

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(c) In the case of a worker whose service with an employer began before the commencement of this Act and whose service would entitle him to long service leave under this section, the amount of long service leave to which such
5 worker shall be entitled shall be the sum of the following amounts—

- (i) an amount calculated on the basis of three months for twenty years' service in respect of the period of his service before such commencement ; and
- 10 (ii) an amount calculated on the basis of three months for ten years' service in respect of the period of his service as from such commencement.

(d) (i) A worker entitled under this section to long service leave in respect of a period of service with an
15 employer shall not, except in pursuance of an agreement between the worker and the employer entitling the worker to leave in the nature of long service leave in addition to long service leave under this Act, be entitled otherwise than under the provisions of this Act to leave in the nature of long
20 service leave in respect of that period of service with that employer.

(ii) Where before or after the commencement of this Act—

(a) a worker has otherwise than in pursuance of this
25 section been granted by an employer and taken any leave in the nature of long service leave in respect of a period of service with the employer ; or

(b) payment of the monetary value of leave in the nature of long service leave has been made to the
30 worker or other person entitled thereto,

the leave so granted and taken or the leave in respect of which such payment has been made shall, except where such leave has been taken or payment has been made pursuant to an agreement referred to in subparagraph (i) of this para-
35 graph, be deducted from any amount of long service leave to which such worker is entitled pursuant to this section in respect of that period of service with that employer.

(3)

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(3) Subject to subsection five of this section, where a worker has become entitled to long service leave in respect of his service with an employer, the employer shall give to the worker and the worker shall take the leave—

- 5 (a) as soon as is practicable having regard to the needs of the employer's establishment or, where the employer and the worker agree that the taking of the leave be postponed until an agreed date, as from that date;
- 10 (b) in one continuous period or, if the worker and the employer so agree, in the following separate periods and not otherwise :—
 - (i) where the amount of the leave is three months, in two separate periods;
 - 15 (ii) where the amount of the leave exceeds three months and does not exceed nineteen and one-half weeks, in two or three separate periods;
 - 20 (iii) where the amount of leave exceeds nineteen and one-half weeks, in two, three or four separate periods.

(4) The long service leave provided by this section is exclusive of annual holidays but is inclusive of all other holidays occurring during the taking of any period of long service leave.

(5) (a) Where the services of a worker are terminated otherwise than by his death and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- 30 (ii) accrues to the worker upon such termination, the worker shall be deemed to have entered upon the leave from the date of such termination and the employer shall forthwith pay to the worker in full his ordinary pay for the leave less any amount already paid to the worker in respect
35 of that leave.

(b)

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(b) Where a worker dies and any long service leave—

(i) to which the worker was entitled has not been taken; or

5 (ii) accrues upon termination of the services of the worker by reason of his death,

the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the
10 worker in respect of long service leave less any amount already paid to the worker in respect of that leave.

(6) The ordinary pay to be paid to a worker or his personal representative in respect of any period of long service leave shall be—

15 (a) in the case of a worker who enters, or is deemed to have entered, upon a period of long service leave, the ordinary pay payable to the worker at the time he enters, or is deemed to have entered, upon the period of long service leave;

20 (b) where a worker dies and any long service leave—

(i) to which the worker was entitled under this section has not been taken; or

(ii) accrues under this section upon termination of the services of the worker by reason of
25 his death,

the worker's ordinary pay at the date of his death :

Provided that where by agreement made after long service leave has accrued the taking of the long service leave due to the worker, or any portion of it, is postponed, and the employer
30 and the worker as a condition of the postponement agree that the ordinary pay to be paid in respect of the leave shall be that which would have been payable had the leave been taken at the date the agreement was entered into—

(a) the ordinary pay shall be as so agreed; and

35 (b) paragraphs (b), (c) and (d) of subsection two of section three of this Act shall have effect as if the words "the date on which he enters, or is deemed to
to

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5 to have entered, upon long service leave, or the date of his death, as the case may require" were omitted therefrom and the words "the date on which the agreement referred to in subsection six of section four of this Act was entered into" were substituted therefor.

(7) Subject to subsection five of this section, where a worker enters upon a period of long service leave, the employer of the worker shall pay to the worker the ordinary pay to be
10 paid to the worker in respect of the period of leave in one of the following ways :—

- (a) in full when the worker commences the period of leave; or
- 15 (b) at the same time as his ordinary pay would have been paid if the worker had remained on duty, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
- 20 (c) in any other way agreed between the employer and the worker,

and the ordinary pay shall become due to the worker accordingly.

(8) Except as provided in subsection five of this section, payment shall not be made by an employer to a
25 worker in lieu of any long service leave or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.

(9) Any amount payable under this section—

- 30 (a) to the personal representative of a worker, shall be recoverable by the personal representative of the worker; or
- (b) to a worker who dies before being paid such amount, shall be recoverable by the personal representative of the worker as payment due to the worker,

35 in like manner as a worker may recover any amount under section twelve of this Act.

(10)

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(10) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken.

(11) For the purposes of this section—

5 (a) the service of a worker with an employer means the period during which the worker has served his employer under an unbroken contract of employment, whether or not during the whole of that period he was employed by his employer as a
10 worker, within the meaning of this Act : Provided that a contract of employment shall be deemed not to have been broken by reason only of any interruption or determination thereof, whether occurring before or after the commencement of this Act, if
15 the interruption or determination—

(i) has been made by the employer with the intention of avoiding any obligation imposed on him by this Act, the Long Service Leave Act, 1955-1963, or by an award
20 made pursuant to section 88c of the Industrial Arbitration Acts, 1940-1955 ; or

(ii) has arisen directly or indirectly from an industrial dispute ; or

25 (iii) has been made by the employer by reason of slackness of trade :

Provided further that the period during which the contract has been so interrupted or determined shall not by reason only of this paragraph be taken into account in calculating the period of service ;

30 (b) where a worker has entered into a contract of employment with an employer within a period of twelve months after the completion of an apprenticeship with the employer the period of his apprenticeship shall be taken into account for the purpose of
35 ascertaining the period of his service with that employer under that contract of employment ;

(c)

Long Service Leave (Metalliferous Mining Industry).

(c) where a business, undertaking or establishment or any part thereof has, whether before or after the commencement of this Act, been transmitted from an employer (in this paragraph called the transmittor) to another employer (in this paragraph called the transmittee) and a person who at the time of the transmission was a worker in the employ of the transmittor in that business, undertaking, establishment or part thereof becomes a worker in the employ of the transmittee—

- (i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transmission; and
- (ii) the period of service which the worker has had with the transmittor or any prior transmittor shall be deemed to be service of the worker with the transmittee.

In this paragraph “transmission”, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession whether by agreement or operation of law, and “transmitted” has a corresponding meaning;

(d) any period during which a person served as a member of the naval, military or air forces of the Commonwealth or of the Civil Construction Corps established under the National Security Act 1939, as amended by subsequent Acts, of the Parliament of the Commonwealth, shall be deemed to be service of that person as a worker in the employ of the employer by whom that person was last employed before he commenced to serve as such member.

5. (1) Section four of this Act shall not apply to any Exemptions.
 35 worker who is employed by an employer as a member of a cf. Act No.
 class of workers for whom provisions entitling the worker 38, 1955,
 s. 5.
 (whether

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(whether immediately or upon the fulfilment of certain conditions) to leave in the nature of long service leave are made—

- 5 (a) by an award or industrial agreement, whether made before or after the commencement of this Act, and such provisions are more favourable to the worker than those of section four of this Act; or
- (b) by or under any Act, other than this Act or the Industrial Arbitration Act.

10 Where the worker ceases to be a member of a class of workers as aforesaid and at the same time ceases to be in the employment of his employer his service as a member of such class shall not be service for the purposes of section four of this Act.

15 (2) (a) The Industrial Commission of New South Wales may, subject to such conditions as it thinks fit to impose, exempt any employer from the operation of the provisions of this Act relating to long service leave in respect of any workers in any case where it is satisfied that the
 20 workers are entitled to benefits under any scheme conducted by or on behalf of the employer, which scheme provides for the granting of long service leave as such to the workers on terms not less favourable than those specified in this Act and that it is in the best interests of the workers that the exemption
 25 should be granted.

(b) Any exemption granted to an employer in relation to long service leave pursuant to subsection four of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to the provisions of subsection two of section five of
 30 the Long Service Leave Act, 1955-1963, and in force immediately before the commencement of this Act shall, in so far as it relates to workers, be deemed to have been granted pursuant to paragraph (a) of this subsection.

(c) (i) Any exemption granted pursuant to para-
 35 graph (a) of this subsection shall not apply to an employer in respect of any worker who, within a period of three months after the date from which the exemption takes effect, or from the

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the date of commencement of his employment, as the case may require, has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer.

(ii) Any exemption deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of a worker who has before the commencement of this Act by notice in writing given pursuant to subsection (4A) of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to subparagraph (i) of paragraph (c) of subsection two of section five of the Long Service Leave Act, 1955-1963, elected to be subject to the provisions of an award or industrial agreement relating to long service leave, or to the provisions of the Long Service Leave Act, 1955, as amended by subsequent Acts, in lieu of those provided for in the scheme conducted by or on behalf of his employer or who after such commencement has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer within the time within which he would have been entitled to make an election, as provided in the said subparagraph (i), had the said subparagraph continued to apply to workers after the commencement of this Act.

(iii) Notwithstanding any provision of any scheme referred to in subparagraph (i) or (ii) of this paragraph where a worker has given notice in writing as aforesaid, the worker shall be entitled to such benefits under the scheme, other than long service leave, as he would have been entitled to receive had he voluntarily left the service of the employer upon the date on which the notice was given: Except as aforesaid upon the notice being given the rights of any worker to any benefits under the scheme and the obligations under the scheme of the employer and any persons charged with the administration of the scheme in respect of that worker and any person claiming under the worker or in respect of his employment shall cease and determine.

(d)

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(d) (i) The Industrial Commission of New South Wales may vary the terms of any exemption granted or deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection or any condition subject to which the exemption was granted, and may revoke the exemption.

(ii) The said Industrial Commission may, of its own motion, and on application by an industrial union of employers or employees or an employer concerned, shall review the terms of any exemption granted before the commencement of this Act, which is deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection.

Where after such a review the Commission is of the opinion that the benefits under a scheme, the subject of the exemption, are not as favourable as those specified in this Act, or that it is no longer in the best interests of the workers concerned that the exemption should continue to operate, the Commission may vary the terms of such exemption or any condition subject to which the exemption was or was deemed to have been granted, or may revoke the exemption.

6. Nothing contained in this Act shall limit or in any way affect the powers, authorities, duties and functions conferred and imposed on the Industrial Commission of New South Wales, or any member thereof, or on a conciliation committee or a conciliation commissioner by or under the Industrial Arbitration Act in respect of long service leave :

Provided that in the exercise and performance of such powers, authorities, duties and functions, the Commission or any member thereof or a conciliation committee or a conciliation commissioner shall not in any award or industrial agreement, whether made before or after the commencement of this Act, insert any provisions relating to long service leave for workers unless those provisions are more favourable to the workers than the provisions of section four of this Act or are applicable to persons who are not workers entitled to the long service leave provided by the said section.

Long Service Leave (Metalliferous Mining Industry).

7. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting out prohibited.
cf. Act No. 38, 1955, s. 7.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

8. Every employer shall keep or cause to be kept a long service leave record in or to the effect of the form and containing the particulars prescribed.

Records to be kept by employer.
cf. Act No. 38, 1955, s. 8.

9. (1) Every inspector shall have power at any reasonable times—

Powers of inspectors.
cf. Act No. 38, 1955, s. 9.

- (a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;
- (b) to require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;
- (d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

10. (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding five hundred pounds.

Penalties and offences.
cf. Act No. 38, 1955, s. 10.

Long Service Leave (Metalliferous Mining Industry).

(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any long service leave record which he is required to keep; or
- 5 (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under
- 10 this Act by an inspector,

shall be liable to a penalty not exceeding five hundred pounds.

(3) Any employer who does any act or thing for the purpose of or which has the effect of in any way whether directly or indirectly—

- 15 (a) avoiding or evading any obligation imposed on him by this Act; or
- (b) defeating, evading, avoiding or preventing the operation of this Act in any respect,

shall be liable to a penalty not exceeding five hundred pounds.

- 20 (4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act
- 25 for such offence accordingly, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

- 11. (1) All penalties imposed by this Act or the regulations made thereunder may be recovered summarily before
- 30 a court of petty sessions holden before a stipendiary magistrate sitting alone or before an industrial magistrate appointed under the Industrial Arbitration Act.

Recovery
of
penalties.
cf. Act No.
38, 1955,
s. 11.

Proceedings

Long Service Leave (Metalliferous Mining Industry).

Proceedings for such recovery may be taken by an inspector or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

- 5 (2) In any such proceedings the stipendiary magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any payment due to a worker under this Act as might have been made in proceedings taken under section twelve of this Act.
10 Such order may be made without motion and shall be a bar to further proceedings under section twelve of this Act in respect of such payment.

- (3) In any proceedings under this section the magistrate before whom such proceedings are taken may
15 award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

- (4) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by
20 him in writing.

12. (1) Any worker may apply to a court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, for an order directing the employer to pay
25 to the worker the full amount of any payment which has become due to the worker under this Act at any time during a period of two years immediately preceding the date of the application.

Recovery of long service leave pay. cf. Act No. 38, 1955, s. 12.

- The magistrate may make any order he thinks just in
30 the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(2)

Long Service Leave (Metalliferous Mining Industry).

(2) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or industrial agreement, proceedings under this section may, with the consent in writing of the worker, 5 be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act concerned in the industry to which the award or industrial agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this 10 subsection may be paid to the secretary or other officer and the receipt of the secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the secretary or other officer (less 15 any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

13. (1) Where the provisions of an award or industrial agreement in force immediately before the commencement 20 of this Act entitling workers to long service leave are not more favourable to the workers than the provisions of section four of this Act the first-mentioned provisions shall, as from the commencement of this Act, be deemed to have been omitted from the award or industrial agreement.

Variation
of certain
awards, etc.
cf. Act No.
38, 1955,
s. 13.

25 This subsection shall not apply to the provisions of any award or industrial agreement entitling persons, who are not workers entitled to long service leave under section four of this Act, to long service leave.

(2) Where pursuant to any provision of an award or 30 industrial agreement to which subsection one of this section applies : —

(a) any person before the commencement of this Act became entitled to long service leave in respect of a period of service with an employer and that 35 person is not entitled under this Act to long service leave in respect of that period of service with that employer; or

(b)

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(b) long service leave has before such commencement accrued upon termination of the services of any person with an employer by reason of that person's death,

5 nothing in subsection one of this section shall take away or affect the right of that person or of his personal representative to any payment in respect of such leave.

In relation to such payments all such proceedings may be taken or continued as might have been taken or continued
10 had the said subsection not been enacted.

14. The provisions of the Industrial Arbitration Act and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to
15 appeals from any industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any payment under this Act.

Provisions as to enforcement of awards, etc.

cf. Act No. 38, 1955, s.14.

20 15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

25 (2) Such regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

30

(c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

- 16.** The Long Service Leave Act, 1955-1963, is amended by inserting in subsection one of section three at the end of the definition of "Worker" the words "but does not include a person who is a worker within the meaning of the Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Amendment
of Act No.
38, 1955.
Sec. 3.
(Interpre-
tation.)

SCHEDULE.

Sec. 3.

Alumina	Iron	Radio-active minerals
Antimony	Iron-ore	Rutile
Arsenic	Ironstone	Scheelite
20 Arsenical Pyrites	Lead	Silver
Bauxite	Limestone	Sulphur
Bismuth	Manganese	Tantalum
Cadmium	Mercury	Tin
Chromite	Molybdenite	Titanium
25 Cinnabar	Nickel	Tungsten and its ores
Cobalt	Osmiridium	Vanadium
Columbium	Oxide of Iron	Wolfram
Copper	Pitchblende	Wulfenite
Galena	Platinoid Minerals	Zinc
30 Gold	Platinum	Zircon
Ilmenite	Plumbago	Zirconia

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1963

New South Wales



ANNO DUODECIMO

ELIZABETHÆ II REGINÆ

Act No. 48, 1963.

An Act to make further provisions with respect to the entitlement to long service leave of workers in the metalliferous mining industry; to amend the Long Service Leave Act, 1955-1963, and the Industrial Arbitration Act, 1940-1961; and for purposes connected therewith. [Assented to, 13th December, 1963.]

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 "Long Service Leave (Metalliferous Mining Industry) Act, 1963".

(2) Short title,
citation and
commence-
ment.

Long Service Leave (Metalliferous Mining Industry).

(2) The Long Service Leave Act, 1955, as amended by the Long Service Leave (Amendment) Act, 1963, and by this Act, may be cited as the Long Service Leave Act, 1955-1963.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Consequen-
tial.

(4) The Long Service Leave (Amendment) Act, 1963, is amended by omitting subsection two of section one.

Construc-
tion.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Interpre-
tation.

3. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Award” means an award for the time being in force under the Industrial Arbitration Act.

“Employer” means any person employing any worker or workers and includes the Crown.

“Industrial agreement” means an industrial agreement for the time being in force under the Industrial Arbitration Act and an agreement filed under section twelve of that Act.

“Industrial Arbitration Act” means the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

“Inspector” means an inspector appointed under the Industrial Arbitration Act.

“Metalliferous

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“Metalliferous mine” means any place, open cut, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any mineral substance by any mode or method, and any place adjoining thereto on which any product of the metalliferous mine, as hereinbefore defined, is stacked, stored, crushed or otherwise treated and includes—

- (a) any quarry;
- (b) any place where two or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for any mineral substance whether by drilling, boring or any other method; and
- (c) so much of the surface of any place and the buildings, workshops, changehouses, structures and works thereon surrounding or adjacent to the shaft, outlets or site of a metalliferous mine, as hereinbefore defined, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety or welfare of persons employed in, at or about the mine.

“Mineral substance” means any substance specified in the Schedule to this Act.

“Ordinary pay”, in relation to any worker, means remuneration for the worker’s normal weekly number of hours of work calculated at his ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

“Prescribed” means prescribed by this Act or by regulations.

“Quarry”

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“Quarry” means any place, open cut or excavation wherein or whereby any operation is carried on above ground for or in connection with the purpose of obtaining any mineral substance and any place adjoining thereto on which any product of the quarry, as hereinbefore defined, is stacked, stored, crushed or otherwise treated.

“Worker” means a person employed in, at or about a metalliferous mine, whether on salary or wages or piecework rates, or as a member of a butty-gang; and the fact that a person is working under a contract for labour only, or substantially for labour only, or as a lessee of any tools or other implements of production, shall not in itself prevent such person being held to be a worker.

(2) For the purposes of the definition of the term “ordinary pay” in subsection one of this section—

- (a) the term “ordinary time rate of pay” in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment means the time rate of pay so fixed for the worker’s work under the terms of his employment, but does not include any amount payable to him in respect of shift work, overtime or other penalty rates, and where two or more time rates of pay are so fixed means the higher or highest of those rates;
- (b) where a worker is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner, or where no ordinary time rate of pay is so fixed for a worker’s work under the terms of his employment, the worker’s ordinary pay shall be deemed to be the average weekly wage earned by him during the period actually worked by him during the twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require. For

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For the purposes of this paragraph the average weekly wage earned by a worker shall be the average of the amounts received by him each week under the terms of his employment after excluding any amount payable to him in respect of shift work, overtime or other penalty rates ;

- (c) where during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require, the worker has received under the terms of his employment, any amount under any bonus, incentive or other similar scheme (other than any amount taken into consideration in assessing an average weekly wage in terms of paragraph (b) of this subsection) his ordinary pay shall be increased by a further sum namely the sum which the worker would have received each week in respect of such bonus, incentive or other similar scheme had such amount been paid by equal weekly payments throughout that period of twelve months ;
- (d) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require ;
- (e) the cash value of any board and 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 thirty shillings, or such greater sum as may be prescribed in lieu thereof, a week for board and ten shillings, or such greater sum as may be prescribed in lieu thereof, a week for lodging.

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(3) Where, by any provision of the Industrial Arbitration Act, a person who is engaged on work in, at or about a metalliferous mine is deemed for the purposes of that Act to be an employee and any other person is deemed for such purposes to be the employer of that employee, then for the purposes of this Act the person so deemed to be an employee shall be deemed to be a worker and the person so deemed to be the employer shall be deemed to be the employer of that worker.

Long
service
leave.

of Act No.
38, 1955,
s. 4.

4. (1) Except as otherwise provided in this Act, every worker shall be entitled to long service leave on ordinary pay in respect of his service with an employer. Service with the employer before the commencement of this Act as well as service with the employer after such commencement shall be taken into account for the purposes of this section.

(2) (a) Subject to paragraph (c) of this subsection, the amount of long service leave to which a worker shall be so entitled shall—

(i) in the case of a worker who has completed at least ten years' service with an employer be—

(a) in respect of each ten years' service so completed, three months; and

(b) on the termination of the worker's services, in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of three months for ten years' service;

(ii) in the case of a worker who has completed with an employer at least five years' service as an adult, and whose services are terminated by the employer for any reason or by the worker on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the worker, be

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be a proportionate amount on the basis of three months for ten years' service (such service to include service with the employer as an adult and otherwise than as an adult).

(b) For the purposes of paragraph (a) of this subsection "service as an adult"—

- (i) in the case of a worker employed to do any work for which the price, rate or wage has been fixed by an award made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts—means the period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the lowest rate fixed under the award or industrial agreement for an adult male or adult female in the same trade, classification or calling as the worker;
- (ii) in the case of a worker being an apprentice the terms of whose employment are governed by an award applicable only to apprentices—means the period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the rate prescribed by the award covering a journeyman carrying out work in the same trade, classification or calling as the worker;
- (iii) in the case of a worker employed to do any work for which no price, rate or wage has been fixed by any award or industrial agreement referred to in subparagraph (i) of this paragraph—means the period of service with the employer during which the worker was not less than twenty-one years of age.

(c)

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(c) In the case of a worker whose service with an employer began before the commencement of this Act and whose service would entitle him to long service leave under this section, the amount of long service leave to which such worker shall be entitled shall be the sum of the following amounts—

- (i) an amount calculated on the basis of three months for twenty years' service in respect of the period of his service before such commencement; and
- (ii) an amount calculated on the basis of three months for ten years' service in respect of the period of his service as from such commencement.

(d) (i) A worker entitled under this section to long service leave in respect of a period of service with an employer shall not, except in pursuance of an agreement between the worker and the employer entitling the worker to leave in the nature of long service leave in addition to long service leave under this Act, be entitled otherwise than under the provisions of this Act to leave in the nature of long service leave in respect of that period of service with that employer.

(ii) Where before or after the commencement of this Act—

- (a) a worker has otherwise than in pursuance of this section been granted by an employer and taken any leave in the nature of long service leave in respect of a period of service with the employer; or
- (b) payment of the monetary value of leave in the nature of long service leave has been made to the worker or other person entitled thereto,

the leave so granted and taken or the leave in respect of which such payment has been made shall, except where such leave has been taken or payment has been made pursuant to an agreement referred to in subparagraph (i) of this paragraph, be deducted from any amount of long service leave to which such worker is entitled pursuant to this section in respect of that period of service with that employer.

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(3) Subject to subsection five of this section, where a worker has become entitled to long service leave in respect of his service with an employer, the employer shall give to the worker and the worker shall take the leave—

- (a) as soon as is practicable having regard to the needs of the employer's establishment or, where the employer and the worker agree that the taking of the leave be postponed until an agreed date, as from that date;
- (b) in one continuous period or, if the worker and the employer so agree, in the following separate periods and not otherwise :—
 - (i) where the amount of the leave is three months, in two separate periods;
 - (ii) where the amount of the leave exceeds three months and does not exceed nineteen and one-half weeks, in two or three separate periods;
 - (iii) where the amount of leave exceeds nineteen and one-half weeks, in two, three or four separate periods.

(4) The long service leave provided by this section is exclusive of annual holidays but is inclusive of all other holidays occurring during the taking of any period of long service leave.

(5) (a) Where the services of a worker are terminated otherwise than by his death and any long service leave—

- (i) to which the worker was entitled has not been taken; or
 - (ii) accrues to the worker upon such termination,
- the worker shall be deemed to have entered upon the leave from the date of such termination and the employer shall forthwith pay to the worker in full his ordinary pay for the leave less any amount already paid to the worker in respect of that leave.

(b)

Long Service Leave (Metalliferous Mining Industry).

(b) Where a worker dies and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- (ii) accrues upon termination of the services of the worker by reason of his death,

the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave.

(6) The ordinary pay to be paid to a worker or his personal representative in respect of any period of long service leave shall be—

- (a) in the case of a worker who enters, or is deemed to have entered, upon a period of long service leave, the ordinary pay payable to the worker at the time he enters, or is deemed to have entered, upon the period of long service leave;
- (b) where a worker dies and any long service leave—
 - (i) to which the worker was entitled under this section has not been taken; or
 - (ii) accrues under this section upon termination of the services of the worker by reason of his death,

the worker's ordinary pay at the date of his death :

Provided that where by agreement made after long service leave has accrued the taking of the long service leave due to the worker, or any portion of it, is postponed, and the employer and the worker as a condition of the postponement agree that the ordinary pay to be paid in respect of the leave shall be that which would have been payable had the leave been taken at the date the agreement was entered into—

- (a) the ordinary pay shall be as so agreed; and
- (b) paragraphs (b), (c) and (d) of subsection two of section three of this Act shall have effect as if the words "the date on which he enters, or is deemed to

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to have entered, upon long service leave, or the date of his death, as the case may require" were omitted therefrom and the words "the date on which the agreement referred to in subsection six of section four of this Act was entered into" were substituted therefor.

(7) Subject to subsection five of this section, where a worker enters upon a period of long service leave, the employer of the worker shall pay to the worker the ordinary pay to be paid to the worker in respect of the period of leave in one of the following ways :—

- (a) in full when the worker commences the period of leave; or
- (b) at the same time as his ordinary pay would have been paid if the worker had remained on duty, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
- (c) in any other way agreed between the employer and the worker,

and the ordinary pay shall become due to the worker accordingly.

(8) Except as provided in subsection five of this section, payment shall not be made by an employer to a worker in lieu of any long service leave or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.

(9) Any amount payable under this section—

- (a) to the personal representative of a worker, shall be recoverable by the personal representative of the worker; or
- (b) to a worker who dies before being paid such amount, shall be recoverable by the personal representative of the worker as payment due to the worker,

in like manner as a worker may recover any amount under section twelve of this Act.

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(10) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken.

(11) For the purposes of this section—

- (a) the service of a worker with an employer means the period during which the worker has served his employer under an unbroken contract of employment, whether or not during the whole of that period he was employed by his employer as a worker, within the meaning of this Act : Provided that a contract of employment shall be deemed not to have been broken by reason only of any interruption or determination thereof, whether occurring before or after the commencement of this Act, if the interruption or determination—
 - (i) has been made by the employer with the intention of avoiding any obligation imposed on him by this Act, the Long Service Leave Act, 1955-1963, or by an award made pursuant to section 88c of the Industrial Arbitration Acts, 1940-1955; or
 - (ii) has arisen directly or indirectly from an industrial dispute; or
 - (iii) has been made by the employer by reason of slackness of trade :

Provided further that the period during which the contract has been so interrupted or determined shall not by reason only of this paragraph be taken into account in calculating the period of service;

- (b) where a worker has entered into a contract of employment with an employer within a period of twelve months after the completion of an apprenticeship with the employer the period of his apprenticeship shall be taken into account for the purpose of ascertaining the period of his service with that employer under that contract of employment;

(c)

Long Service Leave (Metalliferous Mining Industry).

- (c) where a business, undertaking or establishment or any part thereof has, whether before or after the commencement of this Act, been transmitted from an employer (in this paragraph called the transmittor) to another employer (in this paragraph called the transmittee) and a person who at the time of the transmission was a worker in the employ of the transmittor in that business, undertaking, establishment or part thereof becomes a worker in the employ of the transmittee—
- (i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transmission; and
 - (ii) the period of service which the worker has had with the transmittor or any prior transmittor shall be deemed to be service of the worker with the transmittee.

In this paragraph “transmission”, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession whether by agreement or operation of law, and “transmitted” has a corresponding meaning;

- (d) any period during which a person served as a member of the naval, military or air forces of the Commonwealth or of the Civil Construction Corps established under the National Security Act 1939, as amended by subsequent Acts, of the Parliament of the Commonwealth, shall be deemed to be service of that person as a worker in the employ of the employer by whom that person was last employed before he commenced to serve as such member.

5. (1) Section four of this Act shall not apply to any worker who is employed by an employer as a member of a class of workers for whom provisions entitling the worker

Exemptions.
cf. Act No.
38, 1955,
s. 5.

(whether

Long Service Leave (Metalliferous Mining Industry).

(whether immediately or upon the fulfilment of certain conditions) to leave in the nature of long service leave are made—

- (a) by an award or industrial agreement, whether made before or after the commencement of this Act, and such provisions are more favourable to the worker than those of section four of this Act; or
- (b) by or under any Act, other than this Act or the Industrial Arbitration Act.

Where the worker ceases to be a member of a class of workers as aforesaid and at the same time ceases to be in the employment of his employer his service as a member of such class shall not be service for the purposes of section four of this Act.

(2) (a) The Industrial Commission of New South Wales may, subject to such conditions as it thinks fit to impose, exempt any employer from the operation of the provisions of this Act relating to long service leave in respect of any workers in any case where it is satisfied that the workers are entitled to benefits under any scheme conducted by or on behalf of the employer, which scheme provides for the granting of long service leave as such to the workers on terms not less favourable than those specified in this Act and that it is in the best interests of the workers that the exemption should be granted.

(b) Any exemption granted to an employer in relation to long service leave pursuant to subsection four of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to the provisions of subsection two of section five of the Long Service Leave Act, 1955-1963, and in force immediately before the commencement of this Act shall, in so far as it relates to workers, be deemed to have been granted pursuant to paragraph (a) of this subsection.

(c) (i) Any exemption granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of any worker who, within a period of three months after the date from which the exemption takes effect, or from the

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the date of commencement of his employment, as the case may require, has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer.

(ii) Any exemption deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of a worker who has before the commencement of this Act by notice in writing given pursuant to subsection (4A) of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to subparagraph (i) of paragraph (c) of subsection two of section five of the Long Service Leave Act, 1955-1963, elected to be subject to the provisions of an award or industrial agreement relating to long service leave, or to the provisions of the Long Service Leave Act, 1955, as amended by subsequent Acts, in lieu of those provided for in the scheme conducted by or on behalf of his employer or who after such commencement has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer within the time within which he would have been entitled to make an election, as provided in the said subparagraph (i), had the said subparagraph continued to apply to workers after the commencement of this Act.

(iii) Notwithstanding any provision of any scheme referred to in subparagraph (i) or (ii) of this paragraph where a worker has given notice in writing as aforesaid, the worker shall be entitled to such benefits under the scheme, other than long service leave, as he would have been entitled to receive had he voluntarily left the service of the employer upon the date on which the notice was given: Except as aforesaid upon the notice being given the rights of any worker to any benefits under the scheme and the obligations under the scheme of the employer and any persons charged with the administration of the scheme in respect of that worker and any person claiming under the worker or in respect of his employment shall cease and determine.

(d)

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(d) (i) The Industrial Commission of New South Wales may vary the terms of any exemption granted or deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection or any condition subject to which the exemption was granted, and may revoke the exemption.

(ii) The said Industrial Commission may, of its own motion, and on application by an industrial union of employers or employees or an employer concerned, shall review the terms of any exemption granted before the commencement of this Act, which is deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection.

Where after such a review the Commission is of the opinion that the benefits under a scheme, the subject of the exemption, are not as favourable as those specified in this Act, or that it is no longer in the best interests of the workers concerned that the exemption should continue to operate, the Commission may vary the terms of such exemption or any condition subject to which the exemption was or was deemed to have been granted, or may revoke the exemption.

Savings
as to
powers, etc.
cf. Act No.
38, 1955,
s. 6.

6. Nothing contained in this Act shall limit or in any way affect the powers, authorities, duties and functions conferred and imposed on the Industrial Commission of New South Wales, or any member thereof, or on a conciliation committee or a conciliation commissioner by or under the Industrial Arbitration Act in respect of long service leave :

Provided that in the exercise and performance of such powers, authorities, duties and functions, the Commission or any member thereof or a conciliation committee or a conciliation commissioner shall not in any award or industrial agreement, whether made before or after the commencement of this Act, insert any provisions relating to long service leave for workers unless those provisions are more favourable to the workers than the provisions of section four of this Act or are applicable to persons who are not workers entitled to the long service leave provided by the said section.

7.

Long Service Leave (Metalliferous Mining Industry).

7. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting out prohibited.
cf. Act No. 38, 1955, s. 7.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

8. Every employer shall keep or cause to be kept a long service leave record in or to the effect of the form and containing the particulars prescribed.

Records to be kept by employer.
cf. Act No. 38, 1955, s. 8.

9. (1) Every inspector shall have power at any reasonable times—

Powers of inspectors.
cf. Act No. 38, 1955, s. 9.

- (a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;
- (b) to require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;
- (d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

10. (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding five hundred pounds.

Penalties and offences.
cf. Act No. 38, 1955, s. 10.

(2)

Long Service Leave (Metalliferous Mining Industry).

(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any long service leave record which he is required to keep; or
- (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under this Act by an inspector,

shall be liable to a penalty not exceeding five hundred pounds.

(3) Any employer who does any act or thing for the purpose of or which has the effect of in any way whether directly or indirectly—

- (a) avoiding or evading any obligation imposed on him by this Act; or
- (b) defeating, evading, avoiding or preventing the operation of this Act in any respect,

shall be liable to a penalty not exceeding five hundred pounds.

(4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for such offence accordingly, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Recovery
of
penalties.
cf. Act No.
38, 1955,
s. 11.

11. (1) All penalties imposed by this Act or the regulations made thereunder may be recovered summarily before a court of petty sessions holden before a stipendiary magistrate sitting alone or before an industrial magistrate appointed under the Industrial Arbitration Act.

Proceedings

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Proceedings for such recovery may be taken by an inspector or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

(2) In any such proceedings the stipendiary magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any payment due to a worker under this Act as might have been made in proceedings taken under section twelve of this Act. Such order may be made without motion and shall be a bar to further proceedings under section twelve of this Act in respect of such payment.

(3) In any proceedings under this section the magistrate before whom such proceedings are taken may award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(4) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by him in writing.

12. (1) Any worker may apply to a court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, for an order directing the employer to pay to the worker the full amount of any payment which has become due to the worker under this Act at any time during a period of two years immediately preceding the date of the application.

Recovery
of long
service
leave pay.
cf. Act No.
38, 1955,
s. 12.

The magistrate may make any order he thinks just in the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

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(2) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or industrial agreement, proceedings under this section may, with the consent in writing of the worker, be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act concerned in the industry to which the award or industrial agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this subsection may be paid to the secretary or other officer and the receipt of the secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

Variation
of certain
awards, etc.
cf. Act No.
38, 1955,
s. 13.

13. (1) Where the provisions of an award or industrial agreement in force immediately before the commencement of this Act entitling workers to long service leave are not more favourable to the workers than the provisions of section four of this Act the first-mentioned provisions shall, as from the commencement of this Act, be deemed to have been omitted from the award or industrial agreement.

This subsection shall not apply to the provisions of any award or industrial agreement entitling persons, who are not workers entitled to long service leave under section four of this Act, to long service leave.

(2) Where pursuant to any provision of an award or industrial agreement to which subsection one of this section applies :—

- (a) any person before the commencement of this Act became entitled to long service leave in respect of a period of service with an employer and that person is not entitled under this Act to long service leave in respect of that period of service with that employer; or

(b)

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- (b) long service leave has before such commencement accrued upon termination of the services of any person with an employer by reason of that person's death,

nothing in subsection one of this section shall take away or affect the right of that person or of his personal representative to any payment in respect of such leave.

In relation to such payments all such proceedings may be taken or continued as might have been taken or continued had the said subsection not been enacted.

14. The provisions of the Industrial Arbitration Act and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to appeals from any industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any payment under this Act.

Provisions
as to en-
forcement
of awards,
etc.
cf. Act No.
38, 1955,
s.14.

15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

(2) Such regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Amendment
of Act No.
38, 1955.
Sec. 3.
(Interpre-
tation.)

16. The Long Service Leave Act, 1955-1963, is amended by inserting in subsection one of section three at the end of the definition of "Worker" the words "but does not include a person who is a worker within the meaning of the Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Sec. 3.

SCHEDULE.

Alumina	Iron	Radio-active minerals
Antimony	Iron-ore	Rutile
Arsenic	Ironstone	Scheelite
Arsenical Pyrites	Lead	Silver
Bauxite	Limestone	Sulphur
Bismuth	Manganese	Tantalum
Cadmium	Mercury	Tin
Chromite	Molybdenite	Titanium
Cinnabar	Nickel	Tungsten and its ores
Cobalt	Osmiridium	Vanadium
Columbium	Oxide of Iron	Wolfram
Copper	Pitchblende	Wulfenite
Galena	Platinoid Minerals	Zinc
Gold	Platinum	Zircon
Ilmenite	Plumbago	Zirconia

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1964

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 5 December, 1963, A.M.*

New South Wales



ANNO DUODECIMO

ELIZABETHÆ II REGINÆ

Act No. 48, 1963.

An Act to make further provisions with respect to the entitlement to long service leave of workers in the metalliferous mining industry; to amend the Long Service Leave Act, 1955-1963, and the Industrial Arbitration Act, 1940-1961; and for purposes connected therewith. [Assented to, 13th December, 1963.]

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 "Long Service Leave (Metalliferous Mining Industry) Act, 1963".
- (2) Short title, citation and commencement.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

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(2) The Long Service Leave Act, 1955, as amended by the Long Service Leave (Amendment) Act, 1963, and by this Act, may be cited as the Long Service Leave Act, 1955-1963.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Consequen-
tial.

(4) The Long Service Leave (Amendment) Act, 1963, is amended by omitting subsection two of section one.

Construc-
tion.

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State, to the intent that, where any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Interpre-
tation.

3. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Award” means an award for the time being in force under the Industrial Arbitration Act.

“Employer” means any person employing any worker or workers and includes the Crown.

“Industrial agreement” means an industrial agreement for the time being in force under the Industrial Arbitration Act and an agreement filed under section twelve of that Act.

“Industrial Arbitration Act” means the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

“Inspector” means an inspector appointed under the Industrial Arbitration Act.

“Metalliferous

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"Metalliferous mine" means any place, open cut, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode or reef wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any mineral substance by any mode or method, and any place adjoining thereto on which any product of the metalliferous mine, as hereinbefore defined, is stacked, stored, crushed or otherwise treated and includes—

- (a) any quarry;
- (b) any place where two or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for any mineral substance whether by drilling, boring or any other method; and
- (c) so much of the surface of any place and the buildings, workshops, changehouses, structures and works thereon surrounding or adjacent to the shaft, outlets or site of a metalliferous mine, as hereinbefore defined, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety or welfare of persons employed in, at or about the mine.

"Mineral substance" means any substance specified in the Schedule to this Act.

"Ordinary pay", in relation to any worker, means remuneration for the worker's normal weekly number of hours of work calculated at his ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

"Prescribed" means prescribed by this Act or by regulations.

"Quarry"

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“Quarry” means any place, open cut or excavation wherein or whereby any operation is carried on above ground for or in connection with the purpose of obtaining any mineral substance and any place adjoining thereto on which any product of the quarry, as hereinbefore defined, is stacked, stored, crushed or otherwise treated.

“Worker” means a person employed in, at or about a metalliferous mine, whether on salary or wages or piecework rates, or as a member of a butt-gang; and the fact that a person is working under a contract for labour only, or substantially for labour only, or as a lessee of any tools or other implements of production, shall not in itself prevent such person being held to be a worker.

(2) For the purposes of the definition of the term “ordinary pay” in subsection one of this section—

- (a) the term “ordinary time rate of pay” in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his employment means the time rate of pay so fixed for the worker’s work under the terms of his employment, but does not include any amount payable to him in respect of shift work, overtime or other penalty rates, and where two or more time rates of pay are so fixed means the higher or highest of those rates;
- (b) where a worker is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner, or where no ordinary time rate of pay is so fixed for a worker’s work under the terms of his employment, the worker’s ordinary pay shall be deemed to be the average weekly wage earned by him during the period actually worked by him during the twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require. For

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For the purposes of this paragraph the average weekly wage earned by a worker shall be the average of the amounts received by him each week under the terms of his employment after excluding any amount payable to him in respect of shift work, overtime or other penalty rates;

- (c) where during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require, the worker has received under the terms of his employment, any amount under any bonus, incentive or other similar scheme (other than any amount taken into consideration in assessing an average weekly wage in terms of paragraph (b) of this subsection) his ordinary pay shall be increased by a further sum namely the sum which the worker would have received each week in respect of such bonus, incentive or other similar scheme had such amount been paid by equal weekly payments throughout that period of twelve months;
- (d) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by him during the period of twelve months immediately preceding the date on which he enters, or is deemed to have entered, upon long service leave, or the date of his death, as the case may require;
- (e) the cash value of any board and 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 thirty shillings, or such greater sum as may be prescribed in lieu thereof, a week for board and ten shillings, or such greater sum as may be prescribed in lieu thereof, a week for lodging.

(3)

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(3) Where, by any provision of the Industrial Arbitration Act, a person who is engaged on work in, at or about a metalliferous mine is deemed for the purposes of that Act to be an employee and any other person is deemed for such purposes to be the employer of that employee, then for the purposes of this Act the person so deemed to be an employee shall be deemed to be a worker and the person so deemed to be the employer shall be deemed to be the employer of that worker.

Long
service
leave.
cf. Act No.
38, 1955,
s. 4.

4. (1) Except as otherwise provided in this Act, every worker shall be entitled to long service leave on ordinary pay in respect of his service with an employer. Service with the employer before the commencement of this Act as well as service with the employer after such commencement shall be taken into account for the purposes of this section.

(2) (a) Subject to paragraph (c) of this subsection, the amount of long service leave to which a worker shall be so entitled shall—

(i) in the case of a worker who has completed at least ten years' service with an employer be—

(a) in respect of each ten years' service so completed, three months; and

(b) on the termination of the worker's services, in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of three months for ten years' service;

(ii) in the case of a worker who has completed with an employer at least five years' service as an adult, and whose services are terminated by the employer for any reason or by the worker on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the worker,
be

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be a proportionate amount on the basis of three months for ten years' service (such service to include service with the employer as an adult and otherwise than as an adult).

(b) For the purposes of paragraph (a) of this subsection "service as an adult"—

- (i) in the case of a worker employed to do any work for which the price, rate or wage has been fixed by an award made under the Commonwealth Conciliation and Arbitration Act 1904, as amended by subsequent Acts, or made under the Industrial Arbitration Act, or has been fixed by an industrial agreement made pursuant to or registered under the said Acts—means the period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the lowest rate fixed under the award or industrial agreement for an adult male or adult female in the same trade, classification or calling as the worker;
- (ii) in the case of a worker being an apprentice the terms of whose employment are governed by an award applicable only to apprentices—means the period of service with an employer during which the remuneration applicable to the worker was at a rate not less than the rate prescribed by the award covering a journeyman carrying out work in the same trade, classification or calling as the worker;
- (iii) in the case of a worker employed to do any work for which no price, rate or wage has been fixed by any award or industrial agreement referred to in subparagraph (i) of this paragraph—means the period of service with the employer during which the worker was not less than twenty-one years of age.

(c)

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(c) In the case of a worker whose service with an employer began before the commencement of this Act and whose service would entitle him to long service leave under this section, the amount of long service leave to which such worker shall be entitled shall be the sum of the following amounts—

- (i) an amount calculated on the basis of three months for twenty years' service in respect of the period of his service before such commencement; and
- (ii) an amount calculated on the basis of three months for ten years' service in respect of the period of his service as from such commencement.

(d) (i) A worker entitled under this section to long service leave in respect of a period of service with an employer shall not, except in pursuance of an agreement between the worker and the employer entitling the worker to leave in the nature of long service leave in addition to long service leave under this Act, be entitled otherwise than under the provisions of this Act to leave in the nature of long service leave in respect of that period of service with that employer.

(ii) Where before or after the commencement of this Act—

- (a) a worker has otherwise than in pursuance of this section been granted by an employer and taken any leave in the nature of long service leave in respect of a period of service with the employer; or
- (b) payment of the monetary value of leave in the nature of long service leave has been made to the worker or other person entitled thereto,

the leave so granted and taken or the leave in respect of which such payment has been made shall, except where such leave has been taken or payment has been made pursuant to an agreement referred to in subparagraph (i) of this paragraph, be deducted from any amount of long service leave to which such worker is entitled pursuant to this section in respect of that period of service with that employer.

(3)

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(3) Subject to subsection five of this section, where a worker has become entitled to long service leave in respect of his service with an employer, the employer shall give to the worker and the worker shall take the leave—

- (a) as soon as is practicable having regard to the needs of the employer's establishment or, where the employer and the worker agree that the taking of the leave be postponed until an agreed date, as from that date;
- (b) in one continuous period or, if the worker and the employer so agree, in the following separate periods and not otherwise : —
 - (i) where the amount of the leave is three months, in two separate periods;
 - (ii) where the amount of the leave exceeds three months and does not exceed nineteen and one-half weeks, in two or three separate periods;
 - (iii) where the amount of leave exceeds nineteen and one-half weeks, in two, three or four separate periods.

(4) The long service leave provided by this section is exclusive of annual holidays but is inclusive of all other holidays occurring during the taking of any period of long service leave.

(5) (a) Where the services of a worker are terminated otherwise than by his death and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- (ii) accrues to the worker upon such termination, the worker shall be deemed to have entered upon the leave from the date of such termination and the employer shall forthwith pay to the worker in full his ordinary pay for the leave less any amount already paid to the worker in respect of that leave.

(b)

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(b) Where a worker dies and any long service leave—

- (i) to which the worker was entitled has not been taken; or
- (ii) accrues upon termination of the services of the worker by reason of his death,

the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave.

(6) The ordinary pay to be paid to a worker or his personal representative in respect of any period of long service leave shall be—

- (a) in the case of a worker who enters, or is deemed to have entered, upon a period of long service leave, the ordinary pay payable to the worker at the time he enters, or is deemed to have entered, upon the period of long service leave;
- (b) where a worker dies and any long service leave—
 - (i) to which the worker was entitled under this section has not been taken; or
 - (ii) accrues under this section upon termination of the services of the worker by reason of his death,

the worker's ordinary pay at the date of his death :

Provided that where by agreement made after long service leave has accrued the taking of the long service leave due to the worker, or any portion of it, is postponed, and the employer and the worker as a condition of the postponement agree that the ordinary pay to be paid in respect of the leave shall be that which would have been payable had the leave been taken at the date the agreement was entered into—

- (a) the ordinary pay shall be as so agreed; and
- (b) paragraphs (b), (c) and (d) of subsection two of section three of this Act shall have effect as if the words "the date on which he enters, or is deemed to

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to have entered, upon long service leave, or the date of his death, as the case may require" were omitted therefrom and the words "the date on which the agreement referred to in subsection six of section four of this Act was entered into" were substituted therefor.

(7) Subject to subsection five of this section, where a worker enters upon a period of long service leave, the employer of the worker shall pay to the worker the ordinary pay to be paid to the worker in respect of the period of leave in one of the following ways :—

- (a) in full when the worker commences the period of leave; or
- (b) at the same time as his ordinary pay would have been paid if the worker had remained on duty, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
- (c) in any other way agreed between the employer and the worker,

and the ordinary pay shall become due to the worker accordingly.

(8) Except as provided in subsection five of this section, payment shall not be made by an employer to a worker in lieu of any long service leave or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.

(9) Any amount payable under this section—

- (a) to the personal representative of a worker, shall be recoverable by the personal representative of the worker; or
- (b) to a worker who dies before being paid such amount, shall be recoverable by the personal representative of the worker as payment due to the worker,

in like manner as a worker may recover any amount under section twelve of this Act.

(10)

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(10) The employer shall give to each worker at least one month's notice of the date from which it is proposed that the worker's long service leave shall be given and taken.

(11) For the purposes of this section—

(a) the service of a worker with an employer means the period during which the worker has served his employer under an unbroken contract of employment, whether or not during the whole of that period he was employed by his employer as a worker, within the meaning of this Act : Provided that a contract of employment shall be deemed not to have been broken by reason only of any interruption or determination thereof, whether occurring before or after the commencement of this Act, if the interruption or determination—

- (i) has been made by the employer with the intention of avoiding any obligation imposed on him by this Act, the Long Service Leave Act, 1955-1963, or by an award made pursuant to section 88c of the Industrial Arbitration Acts, 1940-1955 ; or
- (ii) has arisen directly or indirectly from an industrial dispute ; or
- (iii) has been made by the employer by reason of slackness of trade :

Provided further that the period during which the contract has been so interrupted or determined shall not by reason only of this paragraph be taken into account in calculating the period of service ;

(b) where a worker has entered into a contract of employment with an employer within a period of twelve months after the completion of an apprenticeship with the employer the period of his apprenticeship shall be taken into account for the purpose of ascertaining the period of his service with that employer under that contract of employment ;

(c)

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(c) where a business, undertaking or establishment or any part thereof has, whether before or after the commencement of this Act, been transmitted from an employer (in this paragraph called the transmittor) to another employer (in this paragraph called the transmittee) and a person who at the time of the transmission was a worker in the employ of the transmittor in that business, undertaking, establishment or part thereof becomes a worker in the employ of the transmittee—

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

(ii) the period of service which the worker has had with the transmittor or any prior transmittor shall be deemed to be service of the worker with the transmittee.

In this paragraph “transmission”, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession whether by agreement or operation of law, and “transmitted” has a corresponding meaning;

(d) any period during which a person served as a member of the naval, military or air forces of the Commonwealth or of the Civil Construction Corps established under the National Security Act 1939, as amended by subsequent Acts, of the Parliament of the Commonwealth, shall be deemed to be service of that person as a worker in the employ of the employer by whom that person was last employed before he commenced to serve as such member.

5. (1) Section four of this Act shall not apply to any worker who is employed by an employer as a member of a class of workers for whom provisions entitling the worker
Exemptions.
cf. Act No.
38, 1955,
s. 5.
(whether

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(whether immediately or upon the fulfilment of certain conditions) to leave in the nature of long service leave are made—

- (a) by an award or industrial agreement, whether made before or after the commencement of this Act, and such provisions are more favourable to the worker than those of section four of this Act; or
- (b) by or under any Act, other than this Act or the Industrial Arbitration Act.

Where the worker ceases to be a member of a class of workers as aforesaid and at the same time ceases to be in the employment of his employer his service as a member of such class shall not be service for the purposes of section four of this Act.

(2) (a) The Industrial Commission of New South Wales may, subject to such conditions as it thinks fit to impose, exempt any employer from the operation of the provisions of this Act relating to long service leave in respect of any workers in any case where it is satisfied that the workers are entitled to benefits under any scheme conducted by or on behalf of the employer, which scheme provides for the granting of long service leave as such to the workers on terms not less favourable than those specified in this Act and that it is in the best interests of the workers that the exemption should be granted.

(b) Any exemption granted to an employer in relation to long service leave pursuant to subsection four of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to the provisions of subsection two of section five of the Long Service Leave Act, 1955-1963, and in force immediately before the commencement of this Act shall, in so far as it relates to workers, be deemed to have been granted pursuant to paragraph (a) of this subsection.

(c) (i) Any exemption granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of any worker who, within a period of three months after the date from which the exemption takes effect, or from the

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the date of commencement of his employment, as the case may require, has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer.

(ii) Any exemption deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection shall not apply to an employer in respect of a worker who has before the commencement of this Act by notice in writing given pursuant to subsection (4A) of section 88c of the Industrial Arbitration Acts, 1940-1955, or pursuant to subparagraph (i) of paragraph (c) of subsection two of section five of the Long Service Leave Act, 1955-1963, elected to be subject to the provisions of an award or industrial agreement relating to long service leave, or to the provisions of the Long Service Leave Act, 1955, as amended by subsequent Acts, in lieu of those provided for in the scheme conducted by or on behalf of his employer or who after such commencement has by notice in writing to the employer elected to be subject to the provisions of this Act relating to long service leave in lieu of those provided for in the scheme conducted by or on behalf of the employer within the time within which he would have been entitled to make an election, as provided in the said subparagraph (i), had the said subparagraph continued to apply to workers after the commencement of this Act.

(iii) Notwithstanding any provision of any scheme referred to in subparagraph (i) or (ii) of this paragraph where a worker has given notice in writing as aforesaid, the worker shall be entitled to such benefits under the scheme, other than long service leave, as he would have been entitled to receive had he voluntarily left the service of the employer upon the date on which the notice was given: Except as aforesaid upon the notice being given the rights of any worker to any benefits under the scheme and the obligations under the scheme of the employer and any persons charged with the administration of the scheme in respect of that worker and any person claiming under the worker or in respect of his employment shall cease and determine.

(d)

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(d) (i) The Industrial Commission of New South Wales may vary the terms of any exemption granted or deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection or any condition subject to which the exemption was granted, and may revoke the exemption.

(ii) The said Industrial Commission may, of its own motion, and on application by an industrial union of employers or employees or an employer concerned, shall review the terms of any exemption granted before the commencement of this Act, which is deemed by paragraph (b) of this subsection to have been granted pursuant to paragraph (a) of this subsection.

Where after such a review the Commission is of the opinion that the benefits under a scheme, the subject of the exemption, are not as favourable as those specified in this Act, or that it is no longer in the best interests of the workers concerned that the exemption should continue to operate, the Commission may vary the terms of such exemption or any condition subject to which the exemption was or was deemed to have been granted, or may revoke the exemption.

Savings
as to
powers, etc.
cf. Act No.
38, 1955,
s. 6.

6. Nothing contained in this Act shall limit or in any way affect the powers, authorities, duties and functions conferred and imposed on the Industrial Commission of New South Wales, or any member thereof, or on a conciliation committee or a conciliation commissioner by or under the Industrial Arbitration Act in respect of long service leave :

Provided that in the exercise and performance of such powers, authorities, duties and functions, the Commission or any member thereof or a conciliation committee or a conciliation commissioner shall not in any award or industrial agreement, whether made before or after the commencement of this Act, insert any provisions relating to long service leave for workers unless those provisions are more favourable to the workers than the provisions of section four of this Act or are applicable to persons who are not workers entitled to the long service leave provided by the said section.

7.

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7. (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act.

Contracting out prohibited.
cf. Act No. 38, 1955, s. 7.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

8. Every employer shall keep or cause to be kept a long service leave record in or to the effect of the form and containing the particulars prescribed.

Records to be kept by employer.
cf. Act No. 38, 1955, s. 8.

9. (1) Every inspector shall have power at any reasonable times—

Powers of inspectors.
cf. Act No. 38, 1955, s. 9.

- (a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;
- (b) to require an employer to produce, at such time and place as the inspector may specify, the long service leave record required to be kept under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;
- (d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

10. (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding five hundred pounds.

Penalties and offences.
cf. Act No. 38, 1955, s. 10.

(2)

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(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any long service leave record which he is required to keep; or
- (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under this Act by an inspector,

shall be liable to a penalty not exceeding five hundred pounds.

(3) Any employer who does any act or thing for the purpose of or which has the effect of in any way whether directly or indirectly—

- (a) avoiding or evading any obligation imposed on him by this Act; or
- (b) defeating, evading, avoiding or preventing the operation of this Act in any respect,

shall be liable to a penalty not exceeding five hundred pounds.

(4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the penalty provided by this Act for such offence accordingly, unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Recovery
of
penalties.
cf. Act No.
38, 1955,
s. 11.

11. (1) All penalties imposed by this Act or the regulations made thereunder may be recovered summarily before a court of petty sessions holden before a stipendiary magistrate sitting alone or before an industrial magistrate appointed under the Industrial Arbitration Act.

Proceedings

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Proceedings for such recovery may be taken by an inspector or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

(2) In any such proceedings the stipendiary magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any payment due to a worker under this Act as might have been made in proceedings taken under section twelve of this Act. Such order may be made without motion and shall be a bar to further proceedings under section twelve of this Act in respect of such payment.

(3) In any proceedings under this section the magistrate before whom such proceedings are taken may award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(4) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by him in writing.

12. (1) Any worker may apply to a court of petty sessions holden before a stipendiary magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, for an order directing the employer to pay to the worker the full amount of any payment which has become due to the worker under this Act at any time during a period of two years immediately preceding the date of the application.

Recovery
of long
service
leave pay.
cf. Act No.
38, 1955,
s. 12.

The magistrate may make any order he thinks just in the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(2)

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(2) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or industrial agreement, proceedings under this section may, with the consent in writing of the worker, be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act concerned in the industry to which the award or industrial agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this subsection may be paid to the secretary or other officer and the receipt of the secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to the secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

Variation
of certain
awards, etc.
cf. Act No.
38, 1955,
s. 13.

13. (1) Where the provisions of an award or industrial agreement in force immediately before the commencement of this Act entitling workers to long service leave are not more favourable to the workers than the provisions of section four of this Act the first-mentioned provisions shall, as from the commencement of this Act, be deemed to have been omitted from the award or industrial agreement.

This subsection shall not apply to the provisions of any award or industrial agreement entitling persons, who are not workers entitled to long service leave under section four of this Act, to long service leave.

(2) Where pursuant to any provision of an award or industrial agreement to which subsection one of this section applies : —

- (a) any person before the commencement of this Act became entitled to long service leave in respect of a period of service with an employer and that person is not entitled under this Act to long service leave in respect of that period of service with that employer; or

(b)

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- (b) long service leave has before such commencement accrued upon termination of the services of any person with an employer by reason of that person's death,

nothing in subsection one of this section shall take away or affect the right of that person or of his personal representative to any payment in respect of such leave.

In relation to such payments all such proceedings may be taken or continued as might have been taken or continued had the said subsection not been enacted.

14. The provisions of the Industrial Arbitration Act and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to appeals from any industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any payment under this Act. Provisions as to enforcement of awards, etc. cf. Act No. 38, 1955, s.14.

15. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Such regulations may impose a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Amendment
of Act No.
38, 1955.
Sec. 3.
(Interpre-
tation.)

16. The Long Service Leave Act, 1955-1963, is amended by inserting in subsection one of section three at the end of the definition of "Worker" the words "but does not include a person who is a worker within the meaning of the Long Service Leave (Metalliferous Mining Industry) Act, 1963".

Sec. 3.

SCHEDULE.

Alumina	Iron	Radio-active minerals
Antimony	Iron-ore	Rutile
Arsenic	Ironstone	Scheelite
Arsenical Pyrites	Lead	Silver
Bauxite	Limestone	Sulphur
Bismuth	Manganese	Tantalum
Cadmium	Mercury	Tin
Chromite	Molybdenite	Titanium
Cinnabar	Nickel	Tungsten and its ores
Cobalt	Osmiridium	Vanadium
Columbium	Oxide of Iron	Wolfram
Copper	Pitchblende	Wulfenite
Galena	Platinoid Minerals	Zinc
Gold	Platinum	Zircon
Ilmenite	Plumbago	Zirconia

In the name and on behalf of Her Majesty I assent to this Act.

E. W. WOODWARD,
Governor.

*Government House,
Sydney, 13th December, 1963.*

