LONG SERVICE LEAVE (AMENDMENT) BILL.

Schedule of Amendments referred to in Legislative Council's Message of 29 November, 1967.

No. 1.—Page 2, clause 2, line 15. After "serious" insert "and wilful". No. 2—Page 8, clause 3, line 16. After "serious" insert "and wilful".

41511 27-



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.

I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 16 November, 1967.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON, Clerk of the Parliaments.

Legislative Council Chamber, Sydney, 29 November, 1967.



New South Wales

ELIZABETHÆ II REGINÆ

Act No. , 1967.

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

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

5 1. (1) This Act may be cited as the "Long Service Leave Short title and citation."

(2)

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NOTE.-The words to be inserted are printed in black letter.

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

dates 1143 (3) The Long Service Leave (Metalliferous Mining 5 Industry) Act, 1963, as amended by the Decimal Currency Act, 1965, and by this Act, may be cited as the Long Service Leave (Metalliferous Mining Industry) Act, 1963-1967.

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

- (a) (i) by inserting in paragraph (a) of subsection sec. 4. two of section four after the word "subsection" (Long the words "and subsection thirteen of this service leave.) section";
 - (ii) by inserting in subparagraph (iii) of the same paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";
- (b) (i) by inserting at the end of subsection three of the same section the following words :----

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

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

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

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of Act No. 38, 1955.

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

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

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

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

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : ---

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

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Act No. , 1967.

Long Service Leave (Amendment).

Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force. 5

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

(13) (a) In this subsection—

- "Award" means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.
- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination"

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"Termination" means termination by any person or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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Act No. , 1967.

Long Service Leave (Amendment).

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

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

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

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

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

3. The Long Service Leave (Metalliferous Mining Amendment Industry) Act, 1963, as amended by the Decimal Currency 48, 1963. Act, 1965, is amended—

Sec. 4.

(a) (i) by inserting in paragraph (a) of subsection (Long sertwo of section four after the word "subsection" vice leave.)
 the words "and subsection thirteen of this section";

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

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

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

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

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

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	(a) of subsection two of this section, b deemed to confer on the worker an entitlement to long service leave.
5	 (c) (i) by inserting in subparagraph (ii) of paragrap (a) of subsection five of the same section after the word "termination" the words "an has not been taken";
D	 (ii) by inserting in the same paragraph after the words "the worker shall" the words ", subject to subsection thirteen of this section,";
	(iii) by inserting in paragraph (b) of the same subsection after the word "death" the words "and has not been taken";
5	(iv) by inserting at the end of the same subsection the following new paragraph : —
)	(c) On the termination of the services of a worker who had taken any leave pursuan to subsection (3A) of this section his employe may, subject to this paragraph and subsection thirteen of this section, deduct from any remuneration payable on such termination in respect of the worker's services—
	 (i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services—ordinary pay for the leave so taken; or
	 (ii) if the worker had become so entitled ordinary pay for the excess, if any over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuan to this Act by that employer to and taken by the worker.
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Long Service Leave (Amendment). The amount so deducted shall not exceed the lesser of-(i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made. (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,": (e) by inserting next after the same subsection the following new subsections : ---

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967,

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1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection—

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

- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.
- "Termination" means termination by any person or by any cause.

(b)

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	Long Service Leave (Amendment).	
	(b) For the purposes of this subsection-	
	(i) where a corporation is—	
	(a) the holding company, or	
	(b) a subsidiary, or	
;	(c) a subsidiary of the holding company,	
)	of another corporation, the first men- tioned corporation and that other cor- poration shall, and no two corporations shall in any other case, be deemed to be	
	related to each other;	
	 (ii) a worker shall be deemed to have trans- ferred from the service of an employer to the service of another employer, only if before, concurrently with or within a period 	
	of two months after the termination of his services with the first mentioned employer he entered into a contract of employment with that other employer, and the transfer	
	shall be deemed to have occurred at the	
	time of that termination.	
	(c) Where before or after the commence- ment of the Long Service Leave (Amendment) Act, 1967, a worker has transferred from the ser- vice of an employer (in this paragraph called the	
5	first employer) being a corporation to the service of another employer being a corporation related to the first employer at the time of that transfer, then	

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

for the purposes of this section-

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

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

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

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

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

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1967 [15c]





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.

> I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 16 November, 1967.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments. Legislative Council Chamber, Sydney, November, 1967.

New South Wales



ANNO SEXTO DECIMO ELIZABETHÆ II REGINÆ

Act No. , 1967.

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

 \mathbf{B}^{E} it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as 5 follows :---

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

(2)

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NOTE.—The words to be inserted are printed in black letter.

Act No. . 1967.

Long Service Leave (Amendment).

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

(3) The Long Service Leave (Metalliferous Mining 5 Industry) Act, 1963, as amended by the Decimal Currency Act, 1965, and by this Act, may be cited as the Long Service Leave (Metalliferous Mining Industry) Act, 1963-1967.

2. The Long Service Leave Act, 1955-1965, is amended— Amendment of Act No.

38, 1955. (a) (i) by inserting in paragraph (a) of subsection sec. 4.

- two of section four after the word "subsection" (Long the words "and subsection thirteen of this service leave.) section";
 - (ii) by inserting in subparagraph (iii) of the same paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";
- (b) (i) by inserting at the end of subsection three of the same section the following words :---

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

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

(3A) If the employer and the worker so agree, a period of long service leave of not less than one month may be given by the employer, and taken by the worker, wholly or partly in advance before the worker has become entitled to any long service leave or to the amount so 1940light agreed to be given and taken. No such agreement shall, for the purposes of paragraph (b) or (c) of subparagraph (i) of paragraph (a)

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

(c) (i) by inserting in subparagraph (ii) of paragraph

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

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

(i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services-ordinary pay for the leave so taken; or

(ii) if the worker had become so entitled -ordinary pay for the excess, if AMORE CONTACT any, over his total entitlement of the period or total of the periods of long beldinate errors. service leave on ordinary pay given pursuant to this Act by that employer -mange Hour off to and taken by the worker.

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The amount so deducted shall not exceed the lesser of—

(i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and

 (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or

> (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.

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

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

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

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Act No. , 1967.

Long Service Leave (Amendment).

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

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

(13) (a) In this subsection-

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

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

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

"Termination"

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Act No. , 1967.

Long Service Leave (Amendment).
"Termination" means termination by any person or by any cause.
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(b) For the purposes of this subsection—
(i) where a corporation is—
(a) the holding company, or
(b) a subsidiary, or
(c) a subsidiary of the holding company,
of another corporation, the first men- tioned corporation and that other cor- poration shall, and no two corporations
shall in any other case, be deemed to be related to each other;
(ii) a worker shall be deemed to have trans-
ferred from the service of an employer to
the service of another employer, only if before, concurrently with or within a period
of two months after the termination of his
services with the first mentioned employer
he entered into a contract of employment

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related to the first employer at the time of that transfer, then for the purposes of this section—
(i) the continuity of the contract of employment of the worker shall be deemed not to have been broken by reason of the transfer; and

service of another employer being a corporation

with that other employer, and the transfer

shall be deemed to have occurred at the time

(c) Where before or after the commence-

of that termination.

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service of an employer (in this paragraph called the first employer) being a corporation to the

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

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

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

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

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

3. The Long Service Leave (Metalliferous Mining Amendment Industry) Act, 1963, as amended by the Decimal Currency 48, 1963. Act, 1965, is amended—

Sec. 4.

 (a) (i) by inserting in paragraph (a) of subsection (Long sertwo of section four after the word "subsection" vice leave.)

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two of section four after the word "subsection" "
the words "and subsection thirteen of this section";
(ii) by inserting in subparagraph (ii) of the same

paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";

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

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

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

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

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Ley stap National Street	(a) of subsection two of this section, be deemed to confer on the worker an entitlement to long service leave.
c) (i)	by inserting in subparagraph (ii) of paragraph (a) of subsection five of the same section after the word "termination" the words "and has not been taken";
20 21	by inserting in the same paragraph after the words "the worker shall" the words ", subject to subsection thirteen of this section,";
(iii)	by inserting in paragraph (b) of the same sub- section after the word "death" the words "and has not been taken";
(iv)	by inserting at the end of the same subsection the following new paragraph : —
	(c) On the termination of the services of a worker who had taken any leave pursuant to subsection (3A) of this section his employer may, subject to this paragraph and subsection thirteen of this section, deduct from any remuneration payable on such termination in respect of the worker's services—
	 (i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services—ordinary pay for the leave so taken; or
	 (ii) if the worker had become so entitled —ordinary pay for the excess, if any, over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuant to this Act by that employer to and taken by the worker.
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The amount of the lesser of-	int so deducted shall not exceed
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of the came sec	aragraph (d) of subsection eleven etion after the word "shall" the et to subsection twelve of this
(e) by inserting next following new su	t after the same subsection the bsections : —
(12) (a) Par	agraph (d) of subsection eleven of

this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and Act in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967,

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boo 1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection-

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

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

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

"Termination" means termination by any person IDA (most basor by any cause. and and add to mam 1967.

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(b) For the purposes of this subsection-

(i) where a corporation is-

- (a) the holding company, or
- (b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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

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

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

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

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

(d) Whete balance or alian the commentee ment of the long actrice Leaves Am adment) Act, 1967, a workee has entered into a contract of employment with in employer formers comparison within a period of methy and another employer platen of an approximation and data the more of such early being a corporation which are the tort atomic add the employer. The period of he fort atomic not comployer. The period of he fort atomic not taken into an any or did purpose of mentions taken into accord of the purpose of mentions

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES-1967

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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.

I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 16 November, 1967.





ELIZABETHÆ II REGINÆ

* * * * * * *

Act No. , 1967.

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

 \mathbf{B}^{E} it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as 5 follows :—

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

(2)

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(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

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

2. The Long Service Leave Act, 1955-1965, is amended— Amendment of Act No. 38, 1955.

- (a) (i) by inserting in paragraph (a) of subsection Sec. 4. two of section four after the word "subsection" (Long the words "and subsection thirteen of this service leave.)
 - (ii) by inserting in subparagraph (iii) of the same paragraph after the words "for any reason" the words "other than the worker's serious misconduct,";
- (b) (i) by inserting at the end of subsection three of the same section the following words : —

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

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

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

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

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

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

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

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The amount so deducted shall not exceed the lesser of—

(i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and

- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : ---

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

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Act

Act No. , 1967.

Long Service Leave (Amendment).

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

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

(13) (a) In this subsection—

- "Award" means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.
- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination"

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"Termination" means termination by any person or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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Act No. , 1967.

Long Service Leave (Amendment).

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

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

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

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

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

3. The Long Service Leave (Metalliferous Mining Amendment Industry) Act, 1963, as amended by the Decimal Currency 48, 1963. Act, 1965, is amended—

Sec. 4.

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

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

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

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

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

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

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(c) (i) by inserting in subparagraph (ii) of paragraph
(a) of subsection five of the same section after the word "termination" the words "and has not been taken";

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

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

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

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : —

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967.

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1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection-

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

- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination" means termination by any person or by any cause.

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(b) For the purposes of this subsection-

(i) where a corporation is—

(a) the holding company, or

- (b) a subsidiary, or
- (c) a subsidiary of the holding company,

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

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

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

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

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(ii)

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

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

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

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

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

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1967 [15c]





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No. , 1967.

A BILL

To make further provisions with respect to long service leave; for this purpose to amend the Long Service Leave Act, 1955–1965, and the Long Service Leave (Metalliferous Mining Industry) Act, 1963; and for purposes connected therewith.

[MR WILLIS-15 August, 1967.]

 \mathbf{B}^{E} it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as 5 follows :—

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

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(2)

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

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

2. The Long Service Leave Act, 1955-1965, is amended— Amendment of Act No.

38, 1955.

- (a) (i) by inserting in paragraph (a) of subsection Sec. 4. two of section four after the word "subsection" (Long the words "and subsection thirteen of this service leave.)
 - (ii) by inserting in subparagraph (iii) of the same paragraph after the words "for any reason" the words "other than the worker's serious misconduct,";

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

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

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

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

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

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

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

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

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : ---

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

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Act

Act No. , 1967.

Long Service Leave (Amendment).

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

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

(13) (a) In this subsection-

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

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

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

"Termination"

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"Termination" means termination by any person or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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(ii)

Act No. , 1967.

Long Service Leave (Amendment).

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

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

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

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

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

3. The Long Service Leave (Metalliferous Mining Amendment Industry) Act, 1963, as amended by the Decimal Currency 48, 1963. Act, 1965, is amended-Sec. 4.

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

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

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

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

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

> > (a)

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Long	Service	Leave	(Amendment).

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

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(c) (i) by inserting in subparagraph (ii) of paragraph
 (a) of subsection five of the same section after the word "termination" the words "and has not been taken";

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

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

(i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services—ordinary pay for the leave so taken; or

(ii) if the worker had become so entitled —ordinary pay for the excess, if any, over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuant to this Act by that employer to and taken by the worker.

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : —

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967.

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1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection—

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

- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.
- "Termination" means termination by any person or by any cause.

(b)

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(b) For the purposes of this subsection-

(i) where a corporation is-

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

(ii)

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

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

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

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

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

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1967 [15c]

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LONG SERVICE LEAVE (AMENDMENT) BILL, 1967

EXPLANATORY NOTE

THE objects of this Bill are to amend the Long Service Leave Act, 1955–1965, and the Long Service Leave (Metalliferous Mining Industry) Act, 1963, to provide that—

- (a) a worker who is dismissed from his employment for serious misconduct before he has completed ten years' service shall not be entitled to long service leave;
- (b) the continuity of the services of a worker who has transferred from employment with a corporation to employment with another corporation shall be deemed not to have been interrupted by the transfer if both corporations were members of a group consisting of a holding corporation and its subsidiaries;
- (c) long service leave may, by agreement between a worker and his employer, be taken in advance; and
- (d) a period of service in the armed forces which commenced after the 2nd September, 1945, shall not be regarded as service with the worker's employer unless the worker was entitled to apply for reinstatement in civil employment pursuant to any Commonwealth Act.
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PROOF

Tong Service Louis Connectional

(2) The Long Service Leave Act. 1955. In Amaded by subsequent Acts and by this Acts pays to ched as the Long Service Leave Act. 19, 5 (2007).

(3) The Cong Service Leave (Metalliferous Mining Schulustry) Act. 1965 as amonded by the Decimal Carrency Act. 1965; and by this Act. (20), be effed as the Long Service Leave (Metalliferous Mining Industry) Act. 1963-1967.

 The Long Service Leave Act. 1955-1965. is amonded --- Amendment of Act No.

No. . 1967.

A BILL

To make further provisions with respect to long service leave; for this purpose to amend the Long Service Leave Act, 1955–1965, and the Long Service Leave (Metalliferous Mining Industry) Act, 1963; and for purposes connected therewith.

[MR WILLIS-15 August, 1967.]

 $\mathbf{B}^{\mathrm{E}}_{\mathrm{and}}$ 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 5 follows :—

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

(2)

41511 27-

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

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

2. The Long Service Leave Act, 1955-1965, is amended— Amendment of Act No. 38, 1955.

 (a) (i) by inserting in paragraph (a) of subsection Sec. 4. two of section four after the word "subsection" (Long the words "and subsection thirteen of this service leave.)

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

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

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

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

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

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

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

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

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

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The amount so deducted shall not exceed the lesser of—

 (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and

(ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or

(b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.

- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : ---

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

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

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

(13) (a) In this subsection—

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

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

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

"Termination"

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Long Service Leave (Amendment). "Termination" means termination by any person or by any cause. (b) For the purposes of this subsection-(i) where a corporation is— (a) the holding company, or (b) a subsidiary, or (c) a subsidiary of the holding company, of another corporation, the first mentioned corporation and that other corporation shall, and no two corporations shall in any other case, be deemed to be related to each other: (ii) a worker shall be deemed to have transferred from the service of an employer to the service of another employer, only if before, concurrently with or within a period of two months after the termination of his services with the first mentioned employer he entered into a contract of employment with that other employer, and the transfer shall be deemed to have occurred at the time

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

of that termination.

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

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(ii)

Long Service Leave (Amendment).

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

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

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

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

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

3. The Long Service Leave (Metalliferous Mining Amendment Industry) Act, 1963, as amended by the Decimal Currency of Act No. 48, 1963. Act, 1965, is amended-Sec. 4.

- (a) (i) by inserting in paragraph (a) of subsection (Long service leave.) two of section four after the word "subsection" the words "and subsection thirteen of this section";
 - (ii) by inserting in subparagraph (ii) of the same paragraph after the words "for any reason" the words "other than the worker's serious misconduct.":
 - (b) (i) by inserting at the end of subsection three of the same section the following words : ----

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

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

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

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Prese /

Long Service Leave (Amendment). (a) of subsection two of this section, be deemed to confer on the worker an entitlement to long service leave. 5 66.51 (c) (i) by inserting in subparagraph (ii) of paragraph (a) of subsection five of the same section after the word "termination" the words "and SVEN has not been taken"; (ii) by inserting in the same paragraph after the words "the worker shall" the words ", subject to subsection thirteen of this section,"; (iii) by inserting in paragraph (b) of the same subsection after the word "death" the words "and has not been taken"; (iv) by inserting at the end of the same subsection the following new paragraph : ----(c) On the termination of the services of a worker who had taken any leave pursuant to subsection (3A) of this section his employer may, subject to this paragraph and subsection thirteen of this section, deduct from any remuneration payable on such termination in respect of the worker's services-(i) if the worker had not become entitled to any long service leave in the course of or upon the termination of his services-ordinary pay for the leave so taken; or (ii) if the worker had become so entitled ----ordinary pay for the excess, if any, over his total entitlement of the period or total of the periods of long service leave on ordinary pay given pursuant to this Act by that employer to and taken by the worker. The

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : —

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967,

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1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection—

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

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

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

"Termination" means termination by any person or by any cause.

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 (i) where a corporation is— (a) the holding company, or (b) a subsidiary, or (c) a subsidiary of the holding company, of another corporation, the first mentioned corporation and that other corporation shall, and no two corporation shall in any other case, be deemed to be related to each other; (ii) a worker shall be deemed to have transferred from the service of an employer, only is before, concurrently with or within a period of two months after the termination of his services with the first mentioned employee he entered into a contract of employment with that other employer, and the transfe shall be deemed to have occurred at the time of that termination. (c) Where before or after the commence of an employer (in this paragraph called the first employer) being a corporation related to the first employer at the time of that transfer, the for the purposes of this section— (i) the continuity of the contract of employ ment of the worker shall be deemed to first employer at the time of that transfer, the for the purposes of this section— 	1	Act No. , 1967.								
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(ii) the period of service which the worker had had with the first employer before the commencement of his services with that other employer (including any service which by reason of a prior transfer or prior transfers or for any other reason he is deemed by this section or, for the purposes of long service leave for such service, he is deemed by any Act or award to have had with the first employer) shall be deemed to be service of the worker with that other employer.

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

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

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

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

BY AUTHORITY: V. C. N. Blight, Government Printer, New South Wales—1967

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New South Males



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 87, 1967.

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

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

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

Р 25439 [15с]

(2)

Long Service Leave (Amendment).

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

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

The Long Service Leave Act, 1955-1965, is amended-2. Amendment of Act No. 38, 1955. (a) (i) by inserting in paragraph (a) of subsection two of section four after the word "subsection" the words "and subsection thirteen of this leave.) section": (ii) by inserting in subparagraph (iii) of the same

- paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";
- (b) (i) by inserting at the end of subsection three of the same section the following words : ---

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

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

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

Sec. 4. (Long

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Long Service Leave (Amendment).

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

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

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

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

The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : —

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

Act

Long Service Leave (Amendment).

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

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

(13) (a) In this subsection—

- "Award" means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.
- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination"

"Termination" means termination by any person or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

(ii)

Long Service Leave (Amendment).

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

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

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

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

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

Amendment of Act No. 48, 1963. **3.** The Long Service Leave (Metalliferous Mining Industry) Act, 1963, as amended by the Decimal Currency Act, 1965, is amended—

- Sec. 4.
- (Long service leave.)
- (a) (i) by inserting in paragraph (a) of subsection two of section four after the word "subsection" the words "and subsection thirteen of this section";
 - (ii) by inserting in subparagraph (ii) of the same paragraph after the words "for any reason" the words "other than the worker's serious and wilful misconduct,";
- (b) (i) by inserting at the end of subsection three of the same section the following words : —

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

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

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

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

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

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

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

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The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : —

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967.

1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection—

- "Award" means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.
- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.
- "Termination" means termination by any person or by any cause.

(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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(ii)

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

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

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

(f) A worker or his personal representative shall not be entitled by virtue of this subsection to long service leave or payment therefor in respect of any period of service if in respect of that period of service an employer was required by any other provisions of this Act, or by any other Act or any award, to give to the worker any long service 13

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

BY AUTHORITY: V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES-1968





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

> I. P. K. VIDLER, Clerk of the Legislative Assembly.

Legislative Assembly Chamber, Sydney, 6 December, 1967.





ANNO SEXTO DECIMO ELIZABETHÆ II REGINÆ

Act No. 87, 1967.

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

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

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

(2)

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

G. R. CRAWFORD,

Chairman of Committees of the Legislative Assembly.

Long Service Leave (Amendment).

(2) The Long Service Leave Act, 1955, as amended by subsequent Acts and by this Act, may be cited as the Long Service Leave Act, 1955-1967.

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

Amendment of Act No.	2.	The	e Loi	ng S	ervice I	eave	e Act,	1955-1	965,	is a	amended	1—
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) (1) by inserting in paragraph (a) of subsection two of section four after the word "subsection" the words "and subsection thirteen of this section";

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

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

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

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

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

of Act No 38, 1955. Sec. 4. (Long service leave.)

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

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

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

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

The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
 - (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
- (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
- (e) by inserting next after the same subsection the following new subsections : ---

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

Act

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

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

(13) (a) In this subsection-

- "Award" means award or industrial agreement made under the Commonwealth Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth of Australia, or an award made or an industrial agreement filed under the Industrial Arbitration Act, 1940, or any Act amending or replacing either of those Acts.
- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination"

"Termination" means termination by any person or by any cause.

- (b) For the purposes of this subsection—
- (i) where a corporation is—
 - (a) the holding company, or
 - (b) a subsidiary, or
 - (c) a subsidiary of the holding company,

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

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

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

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

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

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

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

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

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

Amendment
of Act No.
48, 1963.3. The Long Service Leave (Metalliferous Mining
Industry) Act, 1963, as amended by the Decimal Currency
Act, 1965, is amended—Sec. 4.Act, 1965, is amended—

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

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

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

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

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

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

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

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

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

The

The amount so deducted shall not exceed the lesser of—

- (i) the ordinary pay which would have been payable for the period of leave or excess leave, as the case may be, had it been taken on such termination; and
- (ii) (a) where the period in respect of which the deduction is to be made is of the same duration as the leave taken, the ordinary pay for the period during which the leave was taken; or
- (b) where the period in respect of which the deduction is to be made is not of the same duration as the leave taken, the ordinary pay for the lowest paid period during the leave taken which is of the same duration as the period in respect of which the deduction is to be made.
 - (d) by inserting in paragraph (d) of subsection eleven of the same section after the word "shall" the words ", subject to subsection twelve of this section,";
 - (e) by inserting next after the same subsection the following new subsections : —

(12) (a) Paragraph (d) of subsection eleven of this section shall not, where the period during which a person served as a member of the naval, military or air forces of the Commonwealth commenced by enlistment or appointment in any such force after the second day of September, one thousand nine hundred and forty-five, apply to and in respect of that period unless, pursuant to an Act of the Parliament of the Commonwealth of Australia enacted before or after the commencement of the Long Service Leave (Amendment) Act, 1967,

Long Service Leave (Amendment).

1967, that person was entitled to apply to be reinstated in his former civil employment on the termination of his period of service as such a member and he did not, at the expiration of the period during which that right subsisted, continue as a member of such a force.

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

(13) (a) In this subsection—

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

- "Corporation" means any body corporate formed or incorporated in or outside New South Wales.
- "Holding company" and "subsidiary" have and shall be deemed always to have had the meanings respectively ascribed thereto by the Companies Act, 1961, or any Act amending or replacing that Act.

"Termination" means termination by any person or by any cause.

(b)

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(b) For the purposes of this subsection—

(i) where a corporation is—

(a) the holding company, or

(b) a subsidiary, or

(c) a subsidiary of the holding company,

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

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

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

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

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

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

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

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

leave

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

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

A. R. CUTLER, Governor.

Government House, Sydney, 18th December, 1967.

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