

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 2 June, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. , 1977.

An Act to amend section 3 and 4 of the Long Service Leave Act, 1955, in connection with the calculation of ordinary pay for the purpose of a payment for long service leave.

BE

Long Service Leave (Amendment).

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

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

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

10

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE LONG SERVICE LEAVE ACT, 1955.

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

Omit the definition, insert instead:—

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

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

20

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

whichever is the greater;

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

30 (i) the period of 12 months;
or

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(b) Section 3 (2), (2A), (2B)—

5 Omit subsection 3 (2), insert instead:—

(2) For the purposes of—

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

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

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

15 (c) paragraph (c) of that definition,
“bonus”, in relation to a worker, means
any amount received by that worker
under the terms of his employment
20 under any bonus, incentive or other
similar scheme, not being an amount
taken into consideration in determining
the amount of the average weekly wage
of that worker referred to in paragraph
(b) of that definition; and

25 (d) paragraph (d) of that definition, the
cash value of any board or lodging
provided for a worker shall be deemed
to be its cash value as fixed by or
30 under the terms of the worker's
employment or, if it is not so fixed,
shall be computed at the rate of \$15, or
such greater sum as may be prescribed
instead, a week for board and \$5, or
35 such greater sum as may be prescribed
instead, a week for lodging.

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

15 (2B) Where long service leave has accrued
to a worker and the employer of that worker and
that worker have agreed that the taking of the
long service leave due to him or any part thereof
shall be postponed that employer and that worker
may agree that, for the purposes of the definition
of "ordinary pay" in subsection (1), the
20 prescribed date shall, in relation to that long
service leave or part, as the case may be, be the
date the agreement was entered into.

(2) (a) Section 4 (5) (c)—

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

(b) Section 4 (5) (c)—

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(c) Section 4 (5) (c)—

5 Omit “The amount so deducted shall not exceed
the lesser of—

(i) the ordinary pay which would have been
payable for the period of leave or excess
leave, as the case may be, had it been
10 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
15 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
20 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.”

25 (d) Section 4 (5AA)—

After section 4 (5), insert :—

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

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

(e) Section 4 (6)—
10 Omit the subsection.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[16c]

Long Service Leave (Amendment)

SCHEDULE 1—continued

AMENDMENTS TO THE LONG SERVICE LEAVE ACT,
1972—continued

(7) (a) shall not exceed the amount of
ordinary pay that would have been payable
for the period of leave or excess leave, as the
case may be, had it been taken on the resignation
and the service of the worker.

(b) Section (6) —

Omit the subsection.

Act No. 10, 1977.

Long Service Leave (Amendment)

This Bill amends the Long Service Leave Act, 1955, in connection with the calculation of ordinary pay for the purpose of a payment for long service leave.

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

The Long Service Leave Act, 1955, is amended in the manner set forth in Schedule 1.

No. , 1977.

A BILL

To amend sections 3 and 4 of the Long Service Leave Act, 1955, in connection with the calculation of ordinary pay for the purpose of a payment for long service leave.

[MR HILLS—23 March, 1977.]

BE

Long Service Leave (Amendment).

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

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

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

10

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE LONG SERVICE LEAVE ACT, 1955.

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

Omit the definition, insert instead:—

15

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

20

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

whichever is the greater;

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

30 (i) the period of 12 months;
or

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(b) Section 3 (2), (2A), (2B)—

5 Omit subsection 3 (2), insert instead:—

(2) For the purposes of—

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

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

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

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

SCHEDULE

Long Service Leave (Amendment).

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

- 5 the time rate of pay fixed by the terms
of his employment for his work under
the terms of his employment reduced
by any amount payable to him in
respect of shift work, overtime or other
10 penalty rates or, where 2 or more time
rates of pay are so fixed, the amount
of remuneration for that worker's
normal weekly number of hours of
work calculated at the higher or
highest of those rates and so reduced;
- 15 (c) paragraph (c) of that definition,
"bonus", in relation to a worker, means
any amount received by that worker
under the terms of his employment
under any bonus, incentive or other
20 similar scheme, not being an amount
taken into consideration in determining
the amount of the average weekly wage
of that worker referred to in paragraph
(b) of that definition; and
- 25 (d) paragraph (d) of that definition, the
cash value of any board or lodging
provided for a worker shall be deemed
to be its cash value as fixed by or
under the terms of the worker's
30 employment or, if it is not so fixed,
shall be computed at the rate of \$15, or
such greater sum as may be prescribed
instead, a week for board and \$5, or
such greater sum as may be prescribed
35 instead, a week for lodging.

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

15 (2B) Where long service leave has accrued
to a worker and the employer of that worker and
that worker have agreed that the taking of the
long service leave due to him or any part thereof
shall be postponed that employer and that worker
20 may agree that, for the purposes of the definition
of "ordinary pay" in subsection (1), the
prescribed date shall, in relation to that long
service leave or part, as the case may be, be the
date the agreement was entered into.

(2) (a) Section 4 (5) (c)—

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

(b) Section 4 (5) (c)—

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

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(c) Section 4 (5) (c)—

5 Omit “The amount so deducted shall not exceed
the lesser of—

(i) the ordinary pay which would have been
payable for the period of leave or excess
10 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
15 taken, the ordinary pay for the
period during which the leave was
taken; or

(b) where the period in respect of
20 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.”

25 (d) Section 4 (5AA)—

After section 4 (5), insert :—

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

SCHEDULE

Long Service Leave (Amendment).

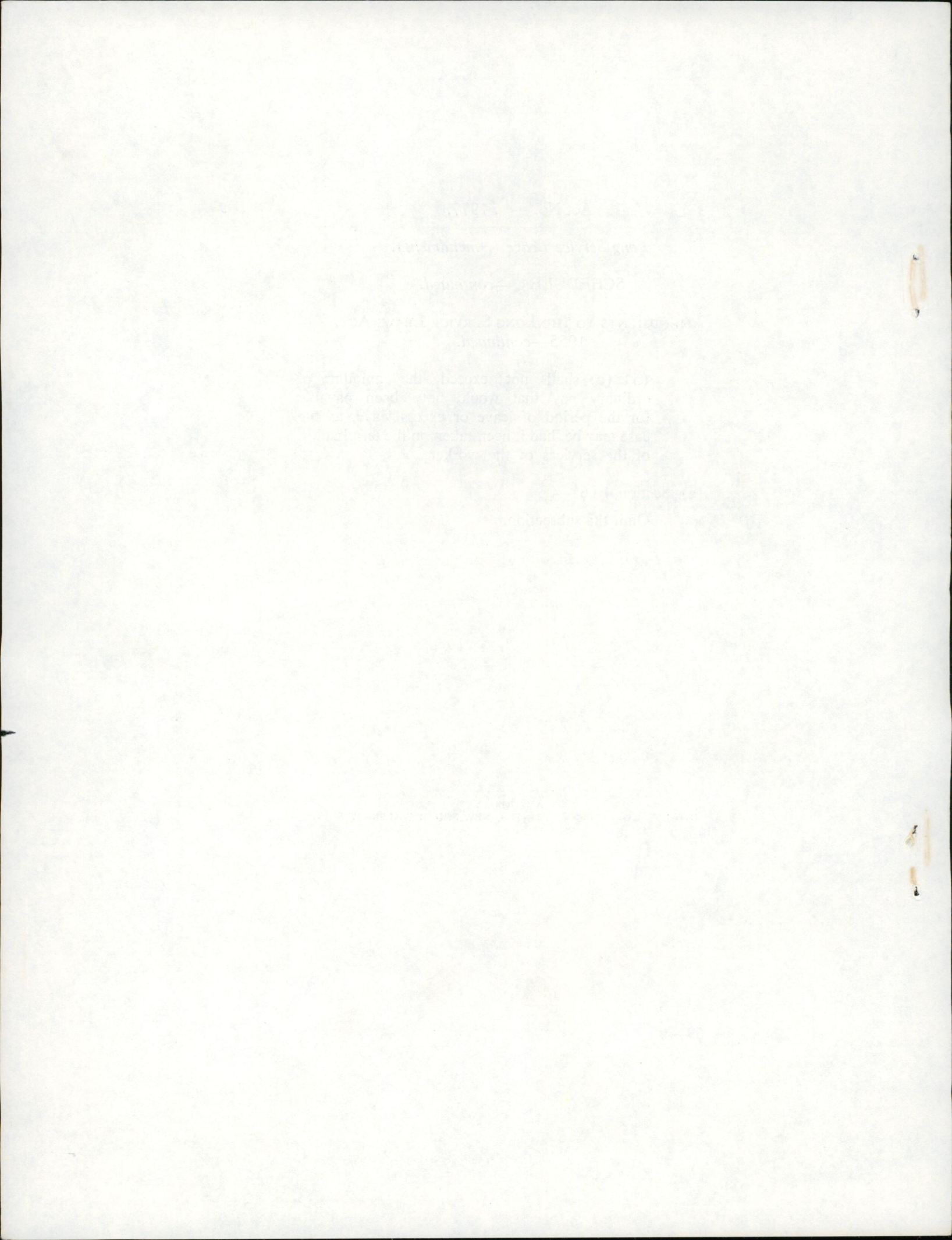
SCHEDULE 1—*continued.*

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

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

(e) Section 4 (6)—
10 Omit the subsection.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977
[16c]



PROOF

LONG SERVICE LEAVE (AMENDMENT) BILL, 1977

EXPLANATORY NOTE

THE object of this Bill is to amend the Long Service Leave Act, 1955, to provide that the ordinary pay of a worker entitled to long service leave shall be calculated by reference to—

- (a) the average of his weekly pay during the 5 year period prior to his taking that leave; or
 - (b) the weekly pay actually being paid to him prior to his taking that leave,
- whichever is the greater.

The Bill makes other provisions of a minor or ancillary nature.

Long Service Leave (Amendment)

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

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

2. The Long Service Leave Act, 1955, is amended in the manner set forth in Schedule 1.

No. , 1977.

A BILL

To amend sections 3 and 4 of the Long Service Leave Act, 1955, in connection with the calculation of ordinary pay for the purpose of a payment for long service leave.

[MR HILLS—23 March, 1977.]

BE

Long Service Leave (Amendment).

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

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

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

10

SCHEDULE 1.

Sec. 2.

AMENDMENTS TO THE LONG SERVICE LEAVE ACT, 1955.

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

Omit the definition, insert instead:—

15

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

20

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

10

whichever is the greater;

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

20

25

30

(i) the period of 12 months;
or

Long Service Leave (Amendment).

SCHEDULE 1—continued.

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(b) Section 3 (2), (2A), (2B)—

5 Omit subsection 3 (2), insert instead:—

(2) For the purposes of—

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

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

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

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

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

- 5 the time rate of pay fixed by the terms
of his employment for his work under
the terms of his employment reduced
by any amount payable to him in
respect of shift work, overtime or other
penalty rates or, where 2 or more time
10 rates of pay are so fixed, the amount
of remuneration for that worker's
normal weekly number of hours of
work calculated at the higher or
highest of those rates and so reduced;
- 15 (c) paragraph (c) of that definition,
"bonus", in relation to a worker, means
any amount received by that worker
under the terms of his employment
under any bonus, incentive or other
20 similar scheme, not being an amount
taken into consideration in determining
the amount of the average weekly wage
of that worker referred to in paragraph
(b) of that definition; and
- 25 (d) paragraph (d) of that definition, the
cash value of any board or lodging
provided for a worker shall be deemed
to be its cash value as fixed by or
under the terms of the worker's
30 employment or, if it is not so fixed,
shall be computed at the rate of \$15, or
such greater sum as may be prescribed
instead, a week for board and \$5, or
such greater sum as may be prescribed
35 instead, a week for lodging.

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

15 (2B) Where long service leave has accrued
to a worker and the employer of that worker and
that worker have agreed that the taking of the
long service leave due to him or any part thereof
shall be postponed that employer and that worker
20 may agree that, for the purposes of the definition
of "ordinary pay" in subsection (1), the
prescribed date shall, in relation to that long
service leave or part, as the case may be, be the
date the agreement was entered into.

(2) (a) Section 4 (5) (c)—

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

(b) Section 4 (5) (c)—

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

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(c) Section 4 (5) (c)—

5 Omit "The amount so deducted shall not exceed
the lesser of—

10 (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

15 (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

20 (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."

25 (d) Section 4 (5AA)—

After section 4 (5), insert :—

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

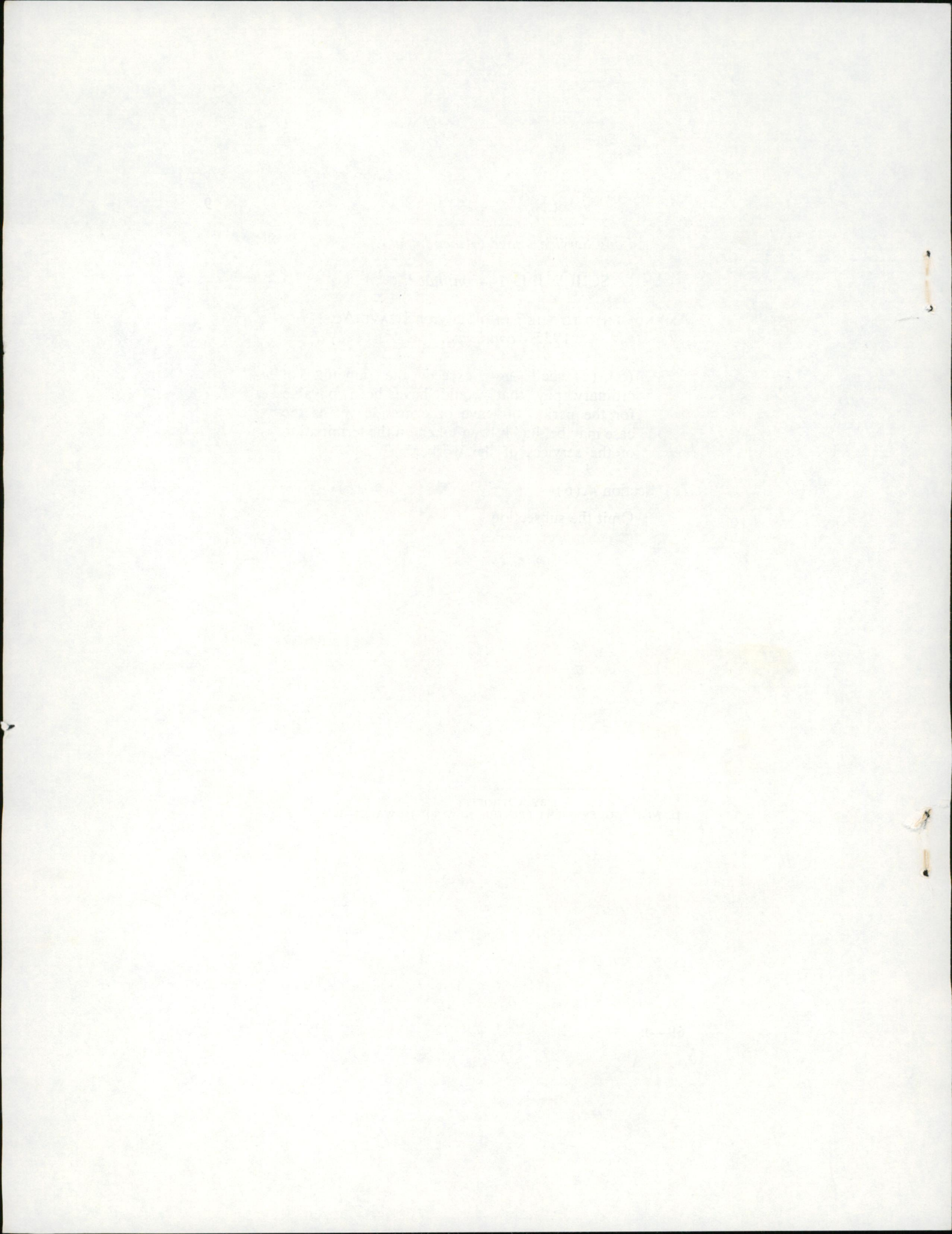
Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

(e) Section 4 (6)—
10 Omit the subsection.



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

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 7 June, 1977.*

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 54, 1977.

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

BE

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

T. J. CAHILL,
Chairman of Committees of the Legislative Assembly.

Long Service Leave (Amendment).

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

Short
title.

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

Amendment
of Act No.
38, 1955.

2. The Long Service Leave Act, 1955, is amended in the manner set forth in Schedule 1.

Sec. 2.

SCHEDULE 1.

AMENDMENTS TO THE LONG SERVICE LEAVE ACT, 1955.

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

Omit the definition, insert instead:—

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

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

whichever is the greater;

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

- (i) the period of 12 months;
or

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Long Service Leave (Amendment).

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

(b) Section 3 (2), (2A), (2B)—

Omit subsection 3 (2), insert instead:—

(2) For the purposes of—

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

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

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

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

SCHEDULE

Long Service Leave (Amendment).

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

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

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

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

(2) (a) Section 4 (5) (c)—

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

(b) Section 4 (5) (c)—

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

SCHEDULE

Long Service Leave (Amendment).

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

(c) Section 4 (5) (c)—

Omit "The amount so deducted shall not exceed the lesser of—

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

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

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

(d) Section 4 (5AA)—

After section 4 (5), insert :—

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

SCHEDULE

Long Service Leave (Amendment).

SCHEDULE 1—*continued.*

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

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

(e) Section 4 (6)—

Omit the subsection.

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

A. R. CUTLER,
Governor.

*Government House,
Sydney, 24th June, 1977.*

July 24, 1977

Long Beach (continued)

SECTION 1 - continued

AMENDMENTS TO THE LONG BEACH LEAVE ACT
1977 - continued

(2) shall not exceed the amount of
ordinary pay that would have been payable
for the period of leave or excess leave, as the
case may be, and it shall be a condition of
the award of the award.

Very truly yours,

City Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Long Beach, California, this 24th day of July, 1977.

City Clerk

City Clerk

City Clerk