

**LONG SERVICE LEAVE (AMENDMENT) ACT, 1985, No. 54**

**New South Wales**



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 54, 1985.**

An Act to amend the Long Service Leave Act, 1955, with respect to entitlement to, and amount of, long service leave, and in other respects.  
[Assented to, 9th May, 1985.]

*Long Service Leave (Amendment) 1985*

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**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, 1985".

**Principal Act.**

2. The Long Service Leave Act, 1955, is referred to in this Act as the Principal Act.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—SAVINGS AND TRANSITIONAL PROVISIONS.

**Amendment of Act No. 38, 1955.**

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

**Savings and transitional provisions.**

5. Schedule 3 has effect.

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## SCHEDULE 1.

(Sec. 4.)

## AMENDMENTS TO THE PRINCIPAL ACT.

- (1) (a) Section 4 (2) (a) (i), (iii), (a2) (ii)—  
Omit “fifteen” wherever occurring, insert instead “10”.
- (b) Section 4 (2) (a) (i), (iii), (a2) (ii), (3) (b)—  
Omit “three months” wherever occurring, insert instead “2 months”.
- (c) Section 4 (2) (a) (i) (b)—  
Omit “ten”, insert instead “5”.
- (d) Section 4 (2) (a) (i) (b)—  
Omit “eight and two-third weeks”, insert instead “1 month”.
- (e) Section 4 (2) (a) (ii)—  
Omit the subparagraph.
- (f) Section 4 (2) (a3)—  
After section 4 (2) (a2), insert:—  
(a3) For the purposes of subsections (2), (3) and (3A),  
“month” means 4 and one-third weeks.
- (g) Section 4 (4)—  
Omit “but is inclusive of all other holidays”.
- (h) Section 4 (4A)—  
After section 4 (4), insert:—  
(4A) Where—  
(a) any day appointed by the Governor as a public holiday to be observed generally throughout New South Wales occurs during any period of long service leave taken by a worker under this section; and

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) the worker is entitled to payment in respect of that day under any Act, award or industrial agreement or under the contract of employment of the worker,

the period of the long service leave shall be increased by one day in respect of that public holiday.

(i) Section 4 (11) (a), (a1)—

Omit section 4 (11) (a), insert instead:—

(a) service of a worker with an employer means continuous service, whether on a permanent, casual, part-time or any other basis, under one or more contracts of employment;

(a1) the service of a worker with an employer shall be deemed to be continuous notwithstanding that the service has been broken by reason only of an interruption or determination thereof—

- (i) caused by the absence of the worker under the terms of the worker's employment;
- (ii) caused by the absence of the worker on account of illness or injury;
- (iii) made by the employer with the intention of avoiding any obligation imposed on the employer by this Act or by an award made pursuant to section 88C of the Industrial Arbitration Act, 1940;
- (iv) arising directly or indirectly from an industrial dispute;
- (v) made by the employer by reason of slackness of trade;
- (vi) arising from the absence of the worker for any cause by leave of the employer; or
- (vii) caused by the employer for any reason other than those referred to in subparagraphs (iii)—(v) where the worker returns to the service of, or is

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re-employed by, the employer within 2 months of the date on which the service was interrupted or determined,

but the period during which the service is so interrupted or determined shall not in the circumstances referred to in subparagraphs (iii)—(vii), by reason only of this paragraph, be taken into account in calculating the period of service;

(j) Section 4 (11) (c) (i), (13) (c) (i)—

Omit “contract of employment” wherever occurring, insert instead “period of service”.

(2) Section 13 (2), (4) (a)—

Omit “1963” wherever occurring, insert instead “1985”.

## SCHEDULE 2.

(Sec. 4.)

## AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

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

(i) From paragraphs (a), (c) and (d), omit “his” wherever occurring, insert instead “the worker’s”.

(ii) From paragraphs (a) (ii), (b) and (c), omit “him” wherever occurring, insert instead “the worker”.

(iii) From paragraphs (a) (ii) and (d), omit “he” wherever occurring, insert instead “the worker”.

(b) Section 3 (1), definition of “Worker”—

Omit “he”, insert instead “the person”.

(c) Section 3 (2) (b), (c), (2A)—

Omit “his employment” wherever occurring, insert instead “that worker’s employment”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(d) Section 3 (2) (b)—

Omit “his work”, insert instead “his or her work”.

(e) Section 3 (2) (b), (2A), (2B)—

Omit “him” wherever occurring, insert instead “that worker”.

(2) Sections 4 (1), (3), (13) (c) (ii), 5 (1)—

Omit “his service” wherever occurring, insert instead “the service of the worker”.

(3) (a) Section 4 (2) (a) (i) (a), (b) (ii) (a), (13) (b) (i) (a)—

Omit “(a)” wherever occurring, insert instead “(A)”.

(b) Section 4 (2) (a) (i) (b), (b) (ii) (b), (13) (b) (i) (b)—

Omit “(b)” wherever occurring, insert instead “(B)”.

(4) Sections 4 (2) (a) (i), (13) (b) (ii), (c) (ii), (e), 5 (2) (c) (ii), (iii)—

Omit “he” wherever occurring, insert instead “the worker”.

(5) (a) Section 4 (2) (a) (i) (c), (13) (b) (i) (c)—

Omit “(c)” wherever occurring, insert instead “(C)”.

(b) Section 4 (2) (a1) (i)—

Omit “the said”, insert instead “those”.

(c) Section 4 (2) (a2)—

Omit “him”, insert instead “the worker”.

(d) Section 4 (2) (a2), (11) (b), (13) (d)—

Omit “his service” wherever occurring, insert instead “service of the worker”.

(e) Section 4 (2) (b) (ii) (b)—

Omit “the person”, insert instead “person”.

(f) Section 4 (3A)—

Omit “(b) or (c)”, insert instead “(B) or (C)”.

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- (6) Sections 4 (5) (a), (b) (ii), (c), (7) (b), (13) (b) (ii), (f), 5 (2) (c)—  
Omit “his” wherever occurring, insert instead “the worker’s”.
- (7) (a) Section 4 (11) (b), (13) (d)—  
Omit “his apprenticeship” wherever occurring, insert instead “the worker’s apprenticeship”.
- (b) Section 4 (11) (d)—  
Omit “he”, insert instead “that person”.
- (c) Section 4 (12) (a)—  
Omit “his” wherever occurring, insert instead “that person’s”.
- (d) Section 4 (12) (a)—  
Omit “he”, insert instead “that person”.
- (8) Sections 4 (12) (b), 9A (1)—  
Omit “him” wherever occurring, insert instead “the person”.
- (9) (a) Section 5 (1)—  
Omit “his employer”, insert instead “the worker’s employer”.
- (b) Section 5 (2) (c) (ii)—  
Omit “subsection (4A) of section 88C”, insert instead “section 88C (4A)”.
- (c) Section 5 (2) (c) (ii)—  
Omit “the said subsection”, insert instead “that subsection”.
- (d) Section 5 (4)—  
Omit “said”.
- (e) Section 5 (4)—  
After “Industrial Commission”, insert “of New South Wales”.
- (10) Section 9 (1) (a)—  
Omit “he”, insert instead “the inspector”.
- (11) Section 9A (3)—  
Omit “he”, insert instead “the Minister”.

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- (12) (a) Section 10 (2) (a)—  
Omit “he”, insert instead “the person”.
- (b) Section 10 (2) (b)—  
Omit “his”, insert instead “the inspector’s”.
- (c) Section 10 (3) (a)—  
Omit “him”, insert instead “the employer”.
- (d) Section 10 (4)—  
Omit “he” where firstly occurring, insert instead “any such person”.
- (e) Section 10 (4)—  
Omit “his knowledge”, insert instead “the person’s knowledge”.
- (f) Section 10 (4)—  
Omit “he” where secondly occurring, insert instead “the person”.
- (13) (a) Section 11 (4)—  
After “his” where firstly occurring, insert “or her”.
- (b) Section 11 (4)—  
Omit “his” where secondly occurring, insert instead “the prosecutor’s”.
- (c) Section 11 (4)—  
Omit “him”, insert instead “the prosecutor”.
- (14) (a) Section 12 (1)—  
Omit “he”, insert instead “the magistrate”.
- (b) Section 12 (2)—  
Omit “him”, insert instead “the secretary or other officer”.



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SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(15) (a) Section 13 (4)—

Omit "his", insert instead "that person's".

(b) Section 13 (4)—

Omit "the said".

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SCHEDULE 3.

(Sec. 5.)

SAVINGS AND TRANSITIONAL PROVISIONS.

**Interpretation.**

1. In this Schedule, "commencement day" means the date of assent to this Act.

**Public holidays.**

2. Section 4 (4A) of the Principal Act, as amended by this Act—

- (a) applies to and in respect of a public holiday occurring during any period of long service leave taken by a worker on or after the commencement day; and

- (b) does not apply to or in respect of a public holiday occurring during any period of long service leave taken before the commencement day,

irrespective of whether or not that period of long service leave commenced to be taken prior to the commencement day or concludes on or after the commencement day.

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SCHEDULE 3—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

**Periods of service.**

3. For the purposes of—

- (a) the application of section 4 (11) of the Principal Act in respect of a period of service before the commencement day; and
- (b) without affecting the generality of paragraph (a), any proceedings instituted before, on or after the commencement day in relation to the long service leave entitlement of a worker in respect of a period of service before the commencement day,

section 4 (11) of the Principal Act shall be construed as if it had not been amended by this Act.

**Certain awards, industrial agreements, etc.**

4. Section 13 (2) and (4) of the Principal Act, as in force immediately before the commencement day, shall continue to apply to and in respect of any award or industrial agreement or right of a person to payment in respect of long service leave, as the case may be, to which those subsections applied immediately before the commencement day and to which those subsections, as amended by this Act, do not apply.

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