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## LONG SERVICE LEAVE AMENDMENT ACT 1980

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## LONG SERVICE LEAVE AMENDMENT

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No. 34 of 1980

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**AN ACT for the purpose of amending the Long Service Leave Act 1976 to make special provision with respect to the entitlement to long service leave of employees in the metalliferous mining industry.**

**[Royal Assent 21 May 1980]**

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—This Act may be cited as the *Long Service Leave Amendment Act 1980*. Short title.

**2**—(1) This section and sections 1, 3, and 14 shall commence Commencement. on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such date as may be fixed by proclamation.

Principal Act.

**3**—In this Act, the *Long Service Leave Act 1976\** is referred to as the Principal Act.

Amendment of  
section 1 of  
Principal Act  
(Short title  
and repeal).

**4**—Section 1 (2) of the Principal Act is amended by omitting “ the Schedule ” and substituting “ Schedule 1 ”.

Amendment of  
section 2 of  
Principal Act  
(Interpreta-  
tion).

**5**—Section 2 (1) of the Principal Act is amended by inserting the following definitions after “ inspector ”:—

“ metalliferous mine ” means—

- (a) a place, open cut, quarry, shaft, tunnel, drive, level or other excavation, drift, gutter, lead, vein, lode, or reef in or by which an operation is carried on for or in connection with the purpose of obtaining a mineral substance by any manner or method; or
- (b) a place adjoining a metalliferous mine within the meaning of paragraph (a) on which a product of that mine is stacked, stored, crushed, or otherwise treated,

and includes—

- (c) a place where 2 or more men are employed in connection with prospecting operations for the purposes of the discovery or exploration of or for a mineral substance, whether by drilling, boring, or any other method; and
- (d) so much of the surface of a place and the buildings, workshops, change-houses, structures, and works on that place surrounding or adjacent to the shaft, outlets, or site of a metalliferous mine, within the meaning of a preceding paragraph of this definition, as are occupied, together with the mine, for the purposes of or in connection with the working of the mine, or the removal from the mine of refuse, or the health, safety, or welfare of persons employed in, at, or about the mine;

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\* No. 95 of 1976.

“ mining employee ” means an employee who is employed in, at, or about a metalliferous mine;

**6**—After section 2 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 2A.

2A—(1) The several substances specified in Schedule 2 are mineral substances within the meaning of this Act.

Mineral substances.

(2) The Governor may, by order, amend Schedule 2 by adding a substance to, or removing a substance from, that Schedule.

**7**—After section 7 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 7A.

7A—Subject to this Act, an employee is entitled to long service leave on ordinary pay in respect of continuous employment with an employer.

Entitlement to long service leave. *Ibid.*, s. 8 (1).

**8**—Section 8 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Amendment of section 8 of Principal Act (Period of long service leave to which employees, other than mining employees, are entitled).

(1) In this section, “ employee ” means an employee who is not a mining employee.

*Ibid.*, s. 8 (2).

**9**—After section 8 of the Principal Act, the following section is inserted:—

Insertion in Principal Act of new section 8A.

8A—(1) In this section, “ employee ” means a mining employee.

Period of long service leave to which mining employees are entitled.

(2) Subject to subsections (3) and (4), the period of long service leave to which an employee is entitled under this Act is—

(a) on the completion by an employee of at least 10 years' continuous employment with his employer—

(i) 13 weeks' long service leave in respect of every period of 10 years' continuous employment with his employer; and

- (ii) on the termination of his employment, an additional period of long service leave in respect of the number of years' continuous employment with his employer since the last accrual of entitlement to long service leave under subparagraph (i), being such a period of long service leave as bears the same proportion to 13 weeks as that number of years bears to 10 years; or
  - (b) in the case of an employee to whom this paragraph applies by virtue of subsection (3) who has completed 5 years', but has not completed 10 years', continuous employment with his employer, such a period of long service leave as bears the same proportion to 13 weeks as the total period of the employee's continuous employment with his employer bears to 10 years.
- (3) Subsection (2) (b) applies to—
- (a) an employee who attains the age of retirement;
  - (b) an employee whose employment is terminated on account of illness of such a nature as to justify the termination of that employment;
  - (c) an employee who terminates his employment on account of incapacity or domestic or other pressing necessity of such a nature as to justify the termination of that employment; and
  - (d) an employee whose employment is terminated by his employer for any reason other than the serious and wilful misconduct of the employee.

(4) In the case of an employee whose period of employment with an employer began before the date fixed by proclamation under section 2 (2) of the *Long Service Leave Amendment Act* 1980 (in this subsection referred to as "the proclaimed date") and whose period of continuous employment with his employer would entitle him to long service leave under this section, the period of long service leave to which that employee is entitled is the total of the following periods:—

- (a) a period calculated on the basis of 13 weeks for 20 years' continuous employment before the date of the commencement of the *Long Service Leave Act* 1964;
- (b) a period calculated on the basis of 13 weeks for 15 years' continuous employment on and after the date referred to in paragraph (a) and before the proclaimed date;
- (c) a period calculated on the basis of 13 weeks for 10 years' continuous employment on and after the proclaimed date.

**10**—Section 9 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:—

Amendment of section 9 of Principal Act (Payment in lieu of long service leave on death of employee).

(2) Where an employee who is not a mining employee dies while he is still in the continuous employment of an employer after having completed—

- (a) more than 15 years' continuous employment with that employer, the employer shall, in addition to any sum payable under subsection (1), pay to the employee's personal representatives, in respect of the period of that continuous employment that is after the last accrual of entitlement to long service leave under section 8 (2) (a), a sum equal to the amount of his ordinary pay for a period equalling 1/60th of the first-mentioned period; or
- (b) at least 7 years', but less than 15 years', continuous employment with that employer, the employer shall pay to the employee's personal representatives a sum equal to the amount of the employee's ordinary pay for a period equalling 1/60th of the period of his continuous employment.

(3) Where a mining employee dies while he is still in the continuous employment of an employer after having completed—

- (a) more than 10 years' continuous employment with that employer, the employer shall, in addition to any sum payable under subsection (1), pay to the employee's personal representatives, in respect of the period of that continuous employment that is after the last accrual of entitlement to long service leave under section 8A (2) (a), a sum equal to the amount of his ordinary pay for a period equalling 1/40th of the first-mentioned period; or
- (b) at least 5 years', but less than 10 years', continuous employment with that employer, the employer shall pay to the employee's personal representatives a sum equal to the amount of the employee's ordinary pay for a period equalling 1/40th of the period of his continuous employment.

Amendment of  
section 12 of  
Principal Act  
(How and when  
long service  
leave shall  
be taken).

**11**—Section 12 of the Principal Act is amended by omitting subsection (10) and substituting the following subsection:—

(10) Except in the case of an employee to whom subsection (4) relates, nothing in this Act requires an employer to grant to an employee leave to which the employee has become entitled under this Act, unless—

- (a) in the case of an employee who is not a mining employee, the period of leave to which he has become entitled is equal to or greater than 13 weeks in respect of his first period of entitlement and  $8\frac{2}{3}$  weeks in respect of a subsequent period of entitlement; and
- (b) in the case of a mining employee, the period of leave to which he has become entitled is equal to or greater than 13 weeks in respect of each of his periods of entitlement.



**12**—The Schedule to the Principal Act is amended by inserting Amendment of Schedule.  
“ 1 ” after “ SCHEDULE ”.

**13**—After Schedule 1 to the Principal Act (as numbered by Insertion in Principal Act of new Schedule 2.  
section 12), the following Schedule is inserted:—

## SCHEDULE 2

## Section 2A

## MINERAL SUBSTANCES

- |                      |                           |
|----------------------|---------------------------|
| 1. Alumina           | 23. Nickel                |
| 2. Antimony          | 24. Osmiridium            |
| 3. Arsenic           | 25. Oxide of iron         |
| 4. Arsenical pyrites | 26. Pitchblende           |
| 5. Bauxite           | 27. Platinoid minerals    |
| 6. Bismuth           | 28. Platinum              |
| 7. Cadmium           | 29. Plumbago              |
| 8. Chromite          | 30. Radioactive minerals  |
| 9. Cinnabar          | 31. Rutile                |
| 10. Cobalt           | 32. Scheelite             |
| 11. Columbium        | 33. Silver                |
| 12. Copper           | 34. Sulphur               |
| 13. Galena           | 35. Tantalum              |
| 14. Gold             | 36. Tin                   |
| 15. Ilmenite         | 37. Titanium              |
| 16. Iron             | 38. Tungsten and its ores |
| 17. Iron-ore         | 39. Vanadium              |
| 18. Ironstone        | 40. Wolfram               |
| 19. Lead             | 41. Wulfenite             |
| 20. Manganese        | 42. Zinc                  |
| 21. Mercury          | 43. Zircon                |
| 22. Molybdenite      | 44. Zirconia              |

Savings.

**14—**(1) The amendments of the Principal Act effected by this Act do not operate so as to entitle an employee employed in, at, or about a metalliferous mine—

- (a) who has been granted long service leave under that Act before the proclaimed date, to long service leave as provided in section 8A of that Act, as inserted by this Act; or

(b) who has not been granted long service leave under the Principal Act before the proclaimed date, to long service leave under that Act as it was in force before that date as well as to long service leave as provided in section 8A of that Act, as inserted by this Act,

in respect of the same period of continuous employment with an employer.

(2) In this section, "proclaimed date" means the date fixed by proclamation under section 2 (2).

