

## COMPANIES (AMENDMENT) ACT.

### Act No. 28, 1959.

An Act to make further provision with respect to the winding up of companies; for this and other purposes to amend the Companies Act, 1936, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 7th December, 1959.] Elizabeth II,  
No. 28, 1959.

**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 "Companies (Amendment) Act, 1959". Short title  
and citation.

(2) The Companies Act, 1936, as amended by subsequent Acts and by this Act, may be cited as the Companies Act, 1936-1959.

2. The Companies Act, 1936, as amended by subsequent Acts, is amended— Amendment  
of Act No.  
33, 1936.

(a) (i) by omitting from subsection one of section one hundred and seventy-three the words "in respect of the wages or salary (whether or not earned wholly or in part by way of commission, not being an overriding commission) of any clerk, commercial traveller, servant, labourer or workman"; Sec. 173.  
(Payment  
of certain  
debts out  
of assets  
subject to  
floating  
charge in  
priority to  
claims  
under the  
charge.)

(ii)

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(ii) by inserting at the end of the same subsection the words "and shall be paid in the same order of priority as is prescribed in respect of those debts by those provisions";

(iii) by inserting next after subsection two of the same section the following new subsection:—

cf. 11 & 12  
Geo. 6, c.  
38, s. 94(2).

(2A) For the purposes of this section, section two hundred and ninety-seven of this Act shall be construed as if the provision for payment of accrued holiday or long service leave remuneration becoming payable on the termination of employment before or by the effect of the winding up order or resolution were a provision for payment of such remuneration becoming payable on the termination of employment before or by the effect of the appointment of the receiver or possession being taken as aforesaid.

Sec. 297.  
(Priorities.)

(b) (i) by omitting from paragraph (b) of subsection one of section two hundred and ninety-seven the words "fifty pounds" and by inserting in lieu thereof the words "three hundred pounds";

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

(b1) all remuneration being—

(i) remuneration (other than remuneration referred to in subparagraph (ii) of this paragraph) payable to any clerk, commercial traveller, servant, labourer or workman in respect of a holiday or absence from work through illness or other good cause; or

(ii) accrued holiday or long service leave remuneration becoming payable to any clerk, commercial traveller, servant, labourer or workman, or in the case of his death to any other person in his right

right, on the termination of his employment before or by the effect of the winding up order or resolution;

- (iii) by omitting paragraph (e) of the same subsection;
- (iv) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

- (3) Where any payment has been made—
- (a) to any clerk, commercial traveller, servant, labourer or workman in the employment of a company on account of wages or salary; or
- (b) to any such clerk, commercial traveller, servant, labourer or workman or, in the case of his death to any other person in his right, on account of any remuneration referred to in paragraph (b1) of subsection one of this section;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, commercial traveller, servant, labourer or workman, or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made and shall have the same right of priority in respect of such amount as the clerk, commercial traveller, servant, labourer or workman, or other person in his right, would have had had the payment not been made.

This subsection shall extend to a payment by any person pursuant to section one hundred and seventy-three of this Act.

(v)

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(v) by omitting from subsection four of the same section the words "the remaining paragraphs" and by inserting in lieu thereof the words "paragraphs (b), (b1) and (c)";

(vi) by omitting from the same subsection the words "paragraph (b) of";

(vii) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection :—

(8) For the purposes of this section—

(a) the expression "the relevant date" means—

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment, or first appointment, of a provisional liquidator, or, if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where subparagraph (i) of this paragraph does not apply, the date of the passing of the resolution for the winding up of the company;

(b) any amount (not being a debt entitled to priority under any other provision of this section) payable by way of allowance or reimbursement under any contract of employment, or award or agreement regulating conditions of employment shall be deemed to be wages

cf. 11 & 12  
Geo. 6, c.  
38, s. 319  
(8).

wages in respect of services rendered to the company at the time when the amount first became so payable; and

- (c) the expression "accrued holiday or long service leave remuneration" includes, in relation to any person, all sums which, by virtue of his contract of employment, or of any award or agreement regulating conditions of his employment, or of any enactment are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday or long service leave had his employment with the company continued until he became entitled to be allowed the holiday or long service leave.

**3.** (1) The provisions of section one hundred and seventy-three of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in any case where, before the commencement of this Act, a receiver was appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession was taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, but the provisions of the said section, as in force immediately before that commencement, shall continue in force, and shall apply, in every such case.

(2) The provisions of section two hundred and ninety-seven of the Companies Act, 1936, as amended by subsequent Acts and by this Act, shall not apply in the case of a winding up where the relevant date as defined in subsection eight of the said section, as in force immediately before the commencement of this Act, occurred before that commencement, but the provisions of the said section, as so in force, shall continue in force, and shall apply, in every such case.