

TASMANIA

LONG SERVICE LEAVE (STATE EMPLOYEES) AMENDMENT BILL 2019

CONTENTS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 4 amended (Salary)
6. Section 5 amended (Non-application of Act)
7. Section 10 amended (Continuous employment)
8. Section 11 amended (Calculation of period of continuous employment)
9. Section 12 substituted
 12. Calculation of long service leave entitlement
10. Section 13 amended (Long service leave is in addition to other leave)
11. Section 15 amended (Maximum amount of long service leave)
12. Section 16 amended (Excess long service leave)
13. Section 17 amended (Unpaid leave for part-time employees)
14. Section 21 amended (Disputes)
15. Section 22 amended (Appeals)
16. Section 26 amended (Records)
17. Section 33 inserted

- 33. Transitional provisions on commencement of *Long Service Leave (State Employees) Amendment Act 2019*
- 18. Schedule 1 amended (Prescribed Authorities)
- 19. Repeal of Act

LONG SERVICE LEAVE (STATE EMPLOYEES) AMENDMENT BILL 2019

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
12 November 2019

*(Brought in by the Minister for Building and Construction, the
Honourable Elise Nicole Archer)*

A BILL FOR

An Act to amend the *Long Service Leave (State Employees) Act 1994*

Be it enacted by Her 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. Short title

This Act may be cited as the *Long Service Leave (State Employees) Amendment Act 2019*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 3

3. Principal Act

In this Act, the *Long Service Leave (State Employees) Act 1994** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting “an officer” from paragraph (b) of the definition of *employee* and substituting “a person”;
- (b) by omitting the definition of *relevant Minister* and substituting the following definitions:

relevant authority, in relation to an employee, means –

- (a) the Minister who administers the Government department or State authority in which the employee is employed; or
- (b) if there is no Minister referred to in paragraph (a) in respect of the employee and the employee is appointed under the *Parliamentary*

*No. 13 of 1994

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 5

Privilege Act 1898, the prescribed authority for the employee; or

- (c) if there is no person in paragraph (a) or (b) in relation to the employee, the Minister responsible for the administration of this Act;

relevant manager, in relation to an employee, means –

- (a) if the employee is appointed under the *Parliamentary Privilege Act 1898*, the prescribed authority for the employee; or
- (b) in any other case, the Secretary of the Government department, or State authority, in which the employee is appointed;
- (c) by omitting the definition of *Secretary*.

5. Section 4 amended (Salary)

Section 4 of the Principal Act is amended as follows:

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 6

(a) by inserting the following paragraph after paragraph (d) in subsection (1):

(da) higher duties, or more responsible duties or relieving, allowances that –

(i) were payable to an employee in respect of duties performed by the employee immediately before a period of long service leave; and

(ii) would, but for the employee being absent on long service leave, be payable to the employee for the whole period of that leave as the duties that attract the allowance are resumed by the employee immediately on the completion of the leave;

(b) by omitting paragraph (c) from subsection (2).

6. Section 5 amended (Non-application of Act)

Section 5(a) of the Principal Act is amended by omitting “*Long Service Leave (Construction Industry) Act 1971*” and substituting “*Construction Industry (Long Service) Act 1997*”.

7. Section 10 amended (Continuous employment)

Section 10(1)(b) of the Principal Act is amended by omitting “sick leave” and substituting “personal leave”.

8. Section 11 amended (Calculation of period of continuous employment)

Section 11 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “length of employment” and substituting “calculation of a period of continuous employment”;
- (b) by omitting from subsection (2) “length of employment of an employee includes –” and substituting “calculation of a period of continuous employment of an employee is to include each of the following, if taken or occurring while he or she is an employee.”;
- (c) by omitting from subsection (2)(a) “and”;
- (d) by omitting from subsection (2)(b) “sick leave” and substituting “personal leave”;
- (e) by inserting in subsection (2)(b) “of the employee” after “injury”;
- (f) by omitting from subsection (2)(b) “and”;
- (g) by omitting from subsection (2)(c) “and”;

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 8

- (h) by omitting paragraph (d) from subsection (2) and substituting the following paragraphs:
 - (d) any period of paid maternity leave, not exceeding 70 days, to which the employee is entitled in accordance with the terms of the employee's employment;
 - (da) any period of paid adoption leave, not exceeding 70 days, to which the employee is entitled, in accordance with the terms of the employee's employment, as the proposed primary care giver of the child in respect of which the leave is taken;
 - (db) any period of paid partner leave, not exceeding 5 days, to which the employee is entitled, in accordance with the terms of the employee's employment, as the partner not identified as the primary care giver of the child in respect of which the leave is taken;
- (i) by omitting from subsection (2)(e) "and";
- (j) by omitting from subsection (2)(f) "and";
- (k) by omitting from subsection (2)(g) "and";

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 8

- (l) by omitting from subsection (2)(h) “and”;
- (m) by omitting from subsection (2)(i) “sick leave” and substituting “personal leave taken by the employee due to illness or injury of the employee”;
- (n) by omitting from subsection (3) “length of employment of an employee does not include any period of –” and substituting “calculation of a period of continuous employment of an employee is not to include any period of –”;
- (o) by inserting the following paragraph before paragraph (b) in subsection (3):
 - (a) leave, or absence, referred to in section 10(1) if that period is not referred to in subsection (2); or
- (p) by omitting from subsection (3)(d) “sick leave without pay” and substituting “personal leave taken without pay by the employee due to illness or injury of the employee”;
- (q) by omitting from subsection (4)(a) “entitlement of long service leave under” and substituting “period of continuous employment of an employee for the purposes of”.

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 9

9. Section 12 substituted

Section 12 of the Principal Act is repealed and the following section is substituted:

12. Calculation of long service leave entitlement

- (1) An employee is entitled to be credited with a period of long service leave, calculated in accordance with subsection (2) at least once in each year of continuous employment of the employee, in respect of the period of continuous employment of the employee since the last time the employee was credited with a period of long service leave in respect of that employment.
- (2) A period of long service leave with which an employee is entitled to be credited under this section for a relevant period is to be calculated in accordance with the following formula:

$$E = \frac{6.5(A)}{B}$$

where –

E means the total number of hours of long service leave with which an employee is entitled to be credited in respect of the relevant period;

A means the total number of hours for which the employee was

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 10

continuously employed during
the relevant period;

B means the total number of days that
the employee would have been
required to work in the relevant
period if the employee had been a
full-time employee, in the
position held by the employee,
for a year.

(3) In this section –

relevant period, in relation to the
calculation of an entitlement to be
credited with a period of long
service leave, means the period of
continuous employment, not
exceeding a year, in respect of
which the entitlement is being
calculated.

**10. Section 13 amended (Long service leave is in
addition to other leave)**

Section 13(1)(a) of the Principal Act is amended
by omitting “sick leave” and substituting
“personal leave”.

**11. Section 15 amended (Maximum amount of long
service leave)**

Section 15 of the Principal Act is amended by
omitting “Minister” and substituting “relevant
authority”.

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 12

12. Section 16 amended (Excess long service leave)

Section 16 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “relevant Minister” and substituting “relevant authority”;
- (b) by omitting from subsection (2) “relevant Minister may give permission” and substituting “relevant authority may give permission”.

13. Section 17 amended (Unpaid leave for part-time employees)

Section 17(3) of the Principal Act is amended by omitting “sick leave” and substituting “personal leave”.

14. Section 21 amended (Disputes)

Section 21 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Secretary is to investigate any dispute in relation to any matter arising under this Act including –” and substituting “relevant manager for an employee is to investigate any dispute in respect of the employee, in relation to any matter arising under this Act, including –”;

- (b) by inserting the following paragraph after paragraph (d) in subsection (1):
 - (e) the calculation of a period of continuous employment; or
- (c) by inserting in subsection (1)(g) “calculation of a period of” after “employment or”;
- (d) by omitting from subsection (2) “the Secretary, the Secretary” and substituting “a relevant manager under this section, the relevant manager”;
- (e) by omitting from subsection (4)(g) “length of” and substituting “period of continuous”;
- (f) by omitting from subsection (5) “Secretary” and substituting “relevant manager for the employee”.

15. Section 22 amended (Appeals)

Section 22(4) of the Principal Act is amended by omitting “Secretary” and substituting “relevant manager for the employee”.

16. Section 26 amended (Records)

Section 26 of the Principal Act is amended by omitting “Secretary” and substituting “relevant manager for the employee”.

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 17

17. Section 33 inserted

After section 32 of the Principal Act, the following section is inserted in Part 5:

**33. Transitional provisions on commencement of
Long Service Leave (State Employees)
*Amendment Act 2019***

- (1) Other than as specified in this section, the commencement of the *Long Service Leave (State Employees) Amendment Act 2019* does not affect the validity of any of the following matters that occurred under this Act before the commencement of that Act:
 - (a) the calculation of a period of continuous employment;
 - (b) the crediting of a period of long service;
 - (c) the granting of long service leave.
- (2) If a new employee was credited with an entitlement to a period of long service leave, in accordance with this Act, before the commencement of the *Long Service Leave (State Employees) Amendment Act 2019* –
 - (a) that person is taken to have been an employee, within the meaning of this Act, from the time when the period of long service leave

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 17

was credited to the person under this Act; and

- (b) the entitlement to the period of long service leave so credited is not invalid solely on the grounds that it was credited to a person who was not an employee, within the meaning of this Act, during the period of continuous employment in respect of which the leave was credited.
- (3) If a new employee was credited with a period of long service leave under another Act in respect of a period of continuous employment, or otherwise lawfully compensated in lieu of such a period of long service leave, that period of continuous employment is not a period of continuous employment for the purposes of calculating an entitlement to a period of long service leave under this Act.
- (4) In this section –

new employee means a person who –

- (a) before the commencement of the *Long Service Leave (State Employees) Amendment Act 2019* was not an employee within the meaning of this Act; and
- (b) on and after the commencement of the *Long Service Leave (State*

Long Service Leave (State Employees) Amendment Act 2019
Act No. of 2019

s. 18

Employees) Amendment Act
2019, is an employee by virtue of
the amendments made, by that
Act, to the definition of
employee.

18. Schedule 1 amended (Prescribed Authorities)

Schedule 1 to the Principal Act is amended by
omitting

Employees employed by the Stanley Cool Stores Board	The Stanley Cool Stores Board
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19. Repeal of Act

This Act is repealed on the first anniversary of
the day on which it commenced.