

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Long Service Leave (State Employees) Amendment Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

The purpose of this Bill is to amend the *Long Service Leave (State Employees) Act 1994* (the Act) to clarify the long service leave entitlements of persons covered under the Act and to address an inequity between persons appointed under the *Parliamentary Privilege Act 1989*. The amendments also contemporise the Act to better support modern employment in the Tasmanian Public Service, which is more flexible and family friendly than when the Act was originally introduced in the early 1990s.

The definition of “employee” will be amended with the effect that any person appointed under the *Parliamentary Privilege Act* will now be an “employee” for the purposes of the Act. This is more inclusive than the current definition, which, in relation to persons appointed under the *Parliamentary Privilege Act*, only includes those appointed as “Officers” under section 3 of that Act. This means that currently persons appointed as sessional and temporary employees under section 4 of the *Parliamentary Privilege Act* are not entitled to long service leave under the Act. This gives rise to an obvious inequity between persons appointed under the *Parliamentary Privilege Act*.

Transitional provisions regarding the long service leave entitlements of persons appointed under the *Parliamentary Privilege Act* will be inserted to validate previous calculations.

The current definition and use of the term “Secretary” in relation to disputes and record-keeping is prohibitive for employees appointed under the *Parliamentary Privilege Act* who do not have a Secretary. The amendments will replace the term “Secretary” with the more inclusive term “relevant manager”, which will include provision for employees appointed under the *Parliamentary Privilege Act*.

Currently, only employees with a “relevant Minister” can apply to seek permission to retain and, if granted, be credited with an entitlement to a period of long service leave in excess of 100 days. Not all employees under the Act have a “relevant Minister” as currently defined. This creates an obvious inequity between employees under the Act.

The amendments will remove the term “relevant Minister” and replace it with the term “relevant authority”. “Relevant authority” has been defined more inclusively. Where an employee does not have a Minister who administers the Government department or State authority in which they are employed, the Minister responsible for administering the Act will be the relevant authority,

unless the employee is a person appointed under the *Parliamentary Privilege Act*. The relevant authority for those employees will be their prescribed authority.

Long service leave is currently calculated in accordance with section 12 of the Act. As it stands, section 12 does not accommodate modern working arrangements well, with differing interpretations causing confusion and leading to unfair outcomes between employees. The Act was introduced at a time when the vast majority of public servants worked a standard 7.6 hours per day, but now there are many circumstances where that is no longer the case.

This Bill will better accommodate modern working arrangements by varying the basis upon which long service leave entitlements are calculated from days to hours. Further, the calculation of long service leave in section 12 will be simplified, such that there will be a single equation that can be used to calculate the long service leave entitlement of any type of employee over any period of continuous employment not exceeding one year.

References to old industrial entitlements will be updated. References to the term “sick leave” will be removed and replaced with the term “personal leave” to reflect the majority of modern Tasmanian public sector awards, in which the term “personal leave” is defined to include more than only leave provided for personal illness or injury.

The term “sick leave” under the Act has, prior to these amendments, included only personal leave provided for personal illness or injury, and not for other reasons such as those common in the modern Tasmanian public sector awards. The purpose of these amendments is to clarify, not change, entitlements. As such, where it is intended that a provision relates only to personal leave provided for personal illness or injury, it will be reflected in the amendments (see paragraphs (d),(e), (m) and (p) of Clause 7 of the Bill).

Any other reference to “personal leave” in the Bill, namely clauses 6, 9 and 12, will encompass other elements of personal leave found in modern Tasmanian public sector awards, for example, personal leave provided to employees:

- to care for members of their immediate family or household who are sick and require care or support;
- to care for members of their immediate family or household who require care due to an unexpected emergency; and
- an employee who is experiencing family violence to attend to health issues or legal, financial, housing, child care or other issues arising from family violence.

It is clear from the extrinsic material for the Act that section 11(2)(d) refers to entitlements for maternity leave as “sick leave” taken because of pregnancy and childbirth. This outdated reference to maternity leave as “sick leave” will be removed in amendments to section 11(2)(d) of the Act, which will also clarify that paid maternity, adoption and partner leave will be able to be included in the calculation of a period of continuous employment. This will better reflect modern industrial entitlements.

Most references to the term “length of employment” will be replaced with terms like “calculation of a period of continuous employment”. This use of consistent terminology will clarify how section 11 interacts with other sections of the Act.

Outdated references will be updated. The reference to the *Long Service Leave (Construction Industry) Act 1971*, which is no longer in force, in section 5 will be removed and replaced with the *Construction Industry (Long Service) Act 1997*, which is currently in force.

The outdated references to the Stanley Cool Stores Board in Schedule 1 will be removed.

These amendments will be of benefit to both employees and employers, with greater certainty and clarity likely to bring more consistent outcomes between employees and reduce disputation between employees and employers.

The Tasmanian Government supports flexible working arrangements to ensure positive work life balances and gender equity – these new working arrangements were not commonplace when the Act was first introduced in the early 1990s.

These amendments will ensure that the Act better accommodates the modern working environment in the Tasmanian Public Service.

Madam Speaker, I commend the Bill to the House.