

CLAUSE NOTES

Long Service Leave (State Employees) Amendment Bill 2019

Clause 1 Short title

This clause provides that the short title of the amending legislation will be the *Long Service Leave (State Employees) Amendment Act 2019*.

Clause 2 Commencement

Under this clause, the Act commences on the day on which it receives the Royal Assent.

Clause 3 Principal Act

This clause provides that the Principal Act is the *Long Service Leave (State Employees) Act 1994*.

Clause 4 Section 3 amended (Interpretation)

This clause amends various definitions in the Principal Act and introduces a number of new definitions.

“employee”: This definition has been amended to the effect that any person appointed under the *Parliamentary Privilege Act 1898* is now an “employee” for the purposes of the Principal Act. This is more inclusive than the previous definition, which, in relation to persons appointed under the *Parliamentary Privilege Act 1898*, only included persons appointed as “Officers” under that Act.

“relevant authority”: This is a new definition. It replaces the definition of **“relevant Minister”**. This change has been introduced because it is recognised that not all employees under the Principal Act have a “relevant Minister”. The term “relevant authority” has been defined in a way that is inclusive of all employees under the Principal Act.

“relevant manager”: This is a new definition. It replaces the definition of **“Secretary”**. This change has been introduced because it is recognised that not all employees under the Principal Act have a “Secretary”. The term “relevant manager” is defined in a way that is inclusive of all employees under the Principal Act.

Clause 5 Section 5 amended (Non-application of Act)

This clause removes the outdated reference to the *Long Service Leave (Construction Industry) Act 1971*, which is no longer in force, and replaces it with the *Construction Industry (Long Service) Act 1997*, which is currently in force.

Clause 6 Section 10 amended (Continuous employment)

This clause removes the reference to the term “sick leave” and replaces it with the term “personal leave”. This is to reflect the majority of modern Tasmanian public sector awards, in which “personal leave” is defined to include more than only leave provided for personal illness or injury. This amendment means that personal leave provided to employees for reasons such as:

- 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;

could be included for the purposes of section 10 of the Principal Act, depending on what is available under the employee’s specific award.

Clause 7 Section 11 amended (Calculation of period of continuous employment)

This Clause renames Section 11 of the Principal Act: “Calculation of period of continuous employment”. This is to clarify the connection between sections 10 and 11 of the Principal Act with the use of consistent terminology. This use of more consistent terminology also clarifies the connection between section 11 and other sections of the Act.

Sections 11(2)(b), 11(2)(i) and 11(3)(d) have all been amended to remove references to the term “sick leave” and replace them with the term “personal leave”. This is to reflect the majority of modern Tasmanian public sector awards, which use the term “personal leave” rather than “sick leave”. These sections have also all been amended to clarify that they only apply to personal leave provided for personal illness or injury, necessarily excluding personal leave provided for reasons other than personal illness or injury, a range of which are available under modern Tasmanian public sector awards, for example, personal leave provided to employees for:

- 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.

Personal leave provided for reasons other than personal illness or injury available under modern Tasmanian public sector awards may still be included in the calculation of a period of continuous employment as follows:

- 1.) Regarding *paid* personal leave, it may still be included by virtue of section 11(2)(g) of the Principal Act— any period of paid leave taken by the employee on account of special circumstances.
- 2.) Regarding *unpaid* personal leave, it may still be included by virtue of section 11(2)(i) of the Principal Act, however, unlike personal leave taken by the employee due to illness or injury of the employee, the inclusion of personal leave provided for other reasons will be limited to any period of personal leave taken without pay for an aggregate period not exceeding 20 days in each year.

This clause also omits section 11(2)(d), and replaces it with a new provision that better reflects modern Tasmanian public sector awards.

Clause 8 Section 12 substituted
12. Calculation of long service leave entitlement

Section 12 has been simplified. It now includes one equation that can be used to calculate the long service leave entitlement of any type of employee (as defined in section 3 of the Principal Act) based on any period of continuous employment not exceeding one year.

An employee's long service leave entitlement will now be calculated in terms of hours, not days as it was prior to these amendments.

Clause 9 Section 13 amended (Long service leave is in addition to other leave)

This clause removes the reference to the term “sick leave” and replaces it with the term “personal leave”. This is to reflect the majority of modern Tasmanian public sector awards, in which “personal leave” is defined to include more than only leave provided for personal illness or injury. This amendment means that personal leave provided to employees for reasons such as:

- 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;

could be included for the purposes of section 13 of the Principal Act, depending on what is available under the employee's specific award.

Clause 10 Section 15 amended (Maximum amount of long service leave)

This clause removes the term “Minister” and replaces it with the newly defined term “relevant authority” (see *Clause 4*). The effect is that all employees under the Principal Act are now able to be credited with a period of long service leave in excess of 100 days if they have been given permission by their relevant authority (See *Clause 11*).

Previously, only those employees with a “relevant Minister” were able to apply for permission and therefore able to be potentially credited with a period of long service leave in excess of 100 days.

Clause 11 Section 16 amended (Excess long service leave)

This clause removes references to the term “relevant Minister” and replaces them with the newly defined term “relevant authority” (see *Clause 4*). The effect is that all employees under the Principal Act now have a mechanism available to apply for permission to retain an entitlement to a period of long service leave in excess of 100 days.

Previously, only those employees with a “relevant Minister” were able to apply for permission and therefore able to potentially retain an entitlement to a period of long service leave in excess of 100 days.

Clause 12 Section 17 amended (Unpaid leave for part-time employees)

This clause removes the reference to the term “sick leave” and replaces it with the term “personal leave”. This is to reflect the majority of modern Tasmanian public sector awards, in which “personal leave” is defined to include more than only leave provided for personal illness or injury. This amendment means that personal leave provided to employees for reasons such as:

- 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;

could be included for the purposes of section 17 of the Principal Act, depending on what is available under the employee’s specific award.

Clause 13 Section 21 amended (Disputes)

This clause removes references to the term “Secretary” and replaces them with the newly defined term “relevant manager” (See *Clause 4*).

This clause also includes amendments which clarify the scope of the section and reflect updated terminology.

Clause 14 Section 22 amended (Appeals)

This clause removes the reference to the term “Secretary” and replaces it with the newly defined term “relevant manager” (See *Clause 4*).

Clause 15 Section 26 amended (Records)

This clause removes the reference to the term “Secretary” and replaces it with the newly defined term “relevant manager” (See *Clause 4*).

Clause 16 Section 33 inserted

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

This is a new section, which provides transitional provisions regarding the long service leave entitlements under the Principal Act of persons appointed under the *Parliamentary Privilege Act 1898*.

Clause 17 Schedule 1 amended (Prescribed Authorities)

This Clause removes the reference to the Stanley Cool Stores Board.

Clause 18 Repeal of Act

This is a standard repeal provision to remove the Bill after its provisions have been incorporated into the Principal Act.