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**LONG SERVICE LEAVE (STATE EMPLOYEES) ACT  
1994**

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**No. 13 of 1994**

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**LONG SERVICE LEAVE (STATE EMPLOYEES) ACT  
1994**

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**No. 13 of 1994**

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**AN ACT to provide for long service leave entitlements for  
State employees**

**[Royal Assent 17 March 1994]**

**B**E 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:—

**PART 1  
PRELIMINARY**

**Short title**

**1**—This Act may be cited as the *Long Service Leave (State Employees) Act 1994*.

**Commencement**

2—This Act commences on a day to be proclaimed.

**Interpretation**

3—In this Act, unless the contrary intention appears—

“age for retirement” means—

(a) the age prescribed by the Act under which an employee is employed as the age at which the employee is entitled to retire from employment; or

(b) if no age is so prescribed, the age of 55 years;

“Commission” means the Tasmanian Industrial Commission constituted under the *Industrial Relations Act 1984*;

“Commissioner” means a member of the Commission;

“day” means a working day;

“employee” means a person who is employed in any capacity by the State, a State authority or a prescribed employer as a full-time employee or a part-time employee and includes—

(a) a person so employed whose terms and conditions of employment are prescribed by an industrial award; and

(b) an officer appointed under the *Parliamentary Privilege Act 1898*;

“Full Bench” means a Full Bench of the Commission constituted under the *Industrial Relations Act 1984*;

“full-time employee” means an employee who is required to devote the whole of working time to the duties of the position and includes the holder of a Government scholarship;

“Government department” has the same meaning as it has under the *Tasmanian State Service Act 1984*;

“Head of an Agency” has the same meaning as it has under the *Tasmanian State Service Act 1984*;

“holder of a Government scholarship” means a person who is studying or training full-time under a scholarship provided by the State or a State authority;

**“industrial award”** means—

- (a) any order or award under the *Industrial Relations Act 1988* of the Commonwealth and any agreement under that Act having the force of an order or award; and
- (b) any award or agreement under the *Industrial Relations Act 1984*;

**“inspector”** means a person holding office as an inspector under the *Industrial Relations Act 1984*;

**“part-time employee”** means an employee who is employed in other than full-time employment;

**“prescribed authority”** means—

- (a) the appropriate Head of an Agency, in the case of an employee to whom the *Tasmanian State Service Act 1984* applies; or
- (b) the person holding the office specified opposite that employee in column 2 of Schedule 1, in the case of an employee specified in column 1 of that Schedule; or
- (c) the person holding a prescribed office, in the case of an employee employed in the Department responsible for the administration of this Act; or
- (d) the Minister responsible for administering the provisions of the *Tasmanian State Service Act 1984* which relate to the appointment of Heads of Agencies, in the case of a Head of an Agency; or
- (e) the Minister responsible for administering the Act under which an employee is appointed, in any other case;

**“relevant Minister”**, in relation to an employee, means the Minister who administers the Government department or State authority in which the employee is employed;

**“resign”** means to cease employment before the age for retirement;

**“retire”** means to cease employment at or after the age for retirement;

**“Secretary”** means the Secretary of the Department;

“State authority” means—

- (a) any person appointed by the Governor under any Act; or
- (b) any body constituted or established under any Act—

to administer any department, business or undertaking on behalf of the State;

“working day” includes a rostered day off;

“year” means a period of 12 months.

### Salary

4—(1) Salary includes any one or more of the following:—

- (a) an allowance specified in an industrial award, other than an allowance referred to in subsection (2);
- (b) an allowance payable for duties an employee carries out relating to the employee’s permanent position;
- (c) an allowance that would, but for an employee being absent on long service leave, be payable to the employee for the whole period of that leave;
- (d) any increment affecting the salary during that period;
- (e) any other prescribed allowance.

(2) Salary does not include—

- (a) extra payment for overtime or shift work; or
- (b) availability, stand-by or call back allowances; or
- (c) higher duties, more responsible duties or relieving allowances; or
- (d) supervision allowances; or
- (e) travelling, meal or accommodation allowances; or
- (f) site, danger and temporary locational allowances; or
- (g) any other prescribed allowance.

### Non-application of Act

5—This Act does not apply to an employee who is—

- (a) entitled to long service leave under the *Long Service Leave (Construction Industry) Act 1971*; or

- (b) entitled to long service leave under the *Local Government (Building and Miscellaneous Provisions) Act 1993*; or
- (c) an employee of a State authority exempted from this Act pursuant to section 6.

### **Exemption from Act**

6—The Minister may, by order notified in the *Gazette*, exempt a State authority from the provisions of this Act.

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## **PART 2**

### **ENTITLEMENT TO LONG SERVICE LEAVE**

#### **Entitlement to long service leave**

7—An employee who has completed at least 10 years of continuous employment is entitled to a period of long service leave calculated in accordance with this Part.

#### **Granting of long service leave**

8—(1) An employee who wishes to take long service leave is to submit an application to the relevant prescribed authority at least one month before the date on which the leave is proposed to commence.

(2) An employee may request the relevant prescribed authority to accept an application for long service leave less than one month before the date on which the leave is proposed to commence if exceptional circumstances exist.

(3) On receipt of an application, the relevant prescribed authority may—

- (a) grant an employee any long service leave to which the employee is entitled; or
- (b) grant an employee only part of any such long service leave; or
- (c) refuse to grant any such long service leave.

(4) A prescribed authority must grant or refuse to grant an application within one month after receiving the application.

(5) A prescribed authority must not grant an employee a period of long service leave in excess of the period of leave to which the employee is entitled at the date on which the leave is to commence.

(6) A prescribed authority must not grant long service leave for a period of less than 15 days unless it considers exceptional circumstances exist to justify a shorter period.

(7) Any period of long service leave granted to an employee may be taken by that employee in one period or more than one period.

(8) If a prescribed authority refuses to grant an employee part or all of any long service leave, it is to give the employee notice in writing of the reasons for that refusal.

(9) If a prescribed authority refuses to grant an employee long service leave, it must grant the employee long service leave within 2 years after the date of the refusal for whichever of the following periods is the greater:—

- (a) at least half of the long service leave to which the employee is entitled; or
- (b) 15 days.

### **Employees previously employed by Commonwealth, &c.**

9—(1) An employee who—

- (a) was employed by the Commonwealth or another State or a Territory of the Commonwealth; and
- (b) became an employee within 3 months after ceasing to be so employed—

is entitled to be credited with up to 65 days of the long service leave the employee would have been entitled to or eligible for if the employee had not ceased to be so employed.

(2) Any period of employment by the Commonwealth or another State or a Territory of the Commonwealth which is prescribed under a law of the Commonwealth or that State or Territory of the Commonwealth as being a continuous period of employment is to be treated as a continuous period of employment for the purposes of this Act.



(3) Any period of long service leave granted to a person referred to in subsection (1) under a law of the Commonwealth or of another State or a Territory of the Commonwealth before the person became an employee is to be treated as a period of long service leave granted under this Act.

(4) In this section, “**employment by the Commonwealth or another State or a Territory of the Commonwealth**” includes employment with a body, organization or authority which is established under an Act of Parliament of the Commonwealth or other State or an ordinance of a Territory of the Commonwealth but excludes employment with a local government authority.

### Continuous employment

**10—(1)** The continuous employment of an employee is not interrupted if the employee takes—

- (a) any period of long service leave; or
- (b) any period of recreation leave or sick leave; or
- (c) any other period of approved leave of absence; or
- (d) any period of absence of up to 3 years from duty so long as during that absence the employee is in receipt of a pension under the *Retirement Benefits Act 1982*; or
- (e) any period of absence of up to 12 months from duty arising from redundancy or standing down so long as the employee is re-employed within that 12 months after being made redundant or stood down; or
- (f) any period of absence of up to 12 months from duty because of ill-health so long as the employee is re-employed within that 12 months after ceasing employment and is not entitled to a pension under the *Retirement Benefits Act 1982*.

(2) The continuous employment of an employee is not interrupted if the employee is appointed or transferred to another position in the employment of the State so long as the employee commences duty in that position within a period of 3 months after being so appointed or transferred.

(3) The continuous employment of an employee is interrupted if—

- (a) the employee resigns or retires and is re-employed 3 months or more after resigning or retiring; or
- (b) a period of 3 months or more occurs between periods of employment of that person.

(4) The continuous employment of an employee ceases on the day on which the employee—

- (a) is dismissed, resigns or retires; or
- (b) attains the age of 65 years.

(5) A period of continuous employment of an employee includes any rostered day off taken by, or due to, the employee.

### **Length of employment**

11—(1) The length of employment of an employee includes employment as a full-time employee, part-time employee or both as a full-time employee and a part-time employee whether that employment occurred before or after the commencement of this Act.

(2) The length of employment of an employee includes—

- (a) any period of recreation leave or long service leave taken by the employee; and
- (b) any period of sick leave, with or without pay, taken by the employee because of illness or injury which is not caused by misconduct on the part of the employee; and
- (c) any period of approved leave of absence taken by the employee for the purpose of serving as a member of any of Australia's defence forces or on a jury; and
- (d) any period of paid sick leave not exceeding 61 days taken by the employee because of pregnancy and childbirth; and
- (e) any prescribed holidays to which the employee is entitled; and
- (f) any period during which the employee is the holder of a Government scholarship; and
- (g) any period of paid leave taken by the employee on account of special circumstances; and

- (h) any period of paid leave taken by the employee on account of bereavement; and
  - (i) any period of approved leave, other than sick leave, taken by the employee without pay for an aggregate period not exceeding 20 days in each year.
- (3) The length of employment of an employee does not include any period of—
- (a) employment after the employee attains the age of 65 years; or
  - (b) absence from duty if, during that absence, the employee is in receipt of a pension under the *Retirement Benefits Act 1982*; or
  - (c) absence from duty where the employee—
    - (i) is made redundant or stood down; or
    - (ii) ceases employment because of ill-health and is not entitled to a pension under the *Retirement Benefits Act 1982*; or
  - (d) approved leave of absence, other than sick leave without pay, taken by the employee without pay for an aggregate period exceeding 20 days in a year of employment under any Act or industrial award.
- (4) This section applies for the purposes of calculating—
- (a) the entitlement of long service leave under section 7; and
  - (b) the period of long service leave to which an employee is entitled to be credited under section 12.

### Calculation of long service leave entitlement

12—(1) At the end of each year of continuous employment, an employee is entitled to be credited with a period of long service leave as follows:—

- (a) a period of 6.5 days in each year if the employee has been a full-time employee for the whole of that year;
- (b) a period of days calculated in accordance with the formula prescribed in subsection (3) if the employee has been a part-time employee at any time during that year.

(2) If an employee has completed a period of continuous employment of less than a year since the last time the employee was credited with a period of long service leave, the period of long service leave to be credited to that employee is—

- (a) if the employee has been a full-time employee for the whole of that completed period of continuous employment, a period of days calculated in accordance with the formula prescribed in subsection (4); and
- (b) in any other case, a period of days calculated in accordance with the formula prescribed in subsection (3).

(3) For the purposes of subsections (1) (b) and (2) (b), the following formula is prescribed:—

$$E = \frac{A}{B} \times 6.5$$

where—

- “E” is the number of days to which the employee is entitled in respect of the period of continuous employment completed by that employee; and
- “A” is the total number of hours worked by the employee in that period; and
- “B” is the total number of hours that the employee would have been required to work in a year if the employee had been a full-time employee in the position held by that employee.

(4) For the purposes of subsection (2) (a), the following formula is prescribed:—

$$E = \frac{A}{B} \times 6.5$$

where—

- “E” is the number of days to which the employee is entitled in respect of the final period of continuous employment completed by that employee; and
- “A” is the total number of days in that final period; and
- “B” is 260 days.

**Long service leave is in addition to other leave**

**13—(1)** Any period of long service leave to which an employee is entitled to be credited is in addition to any—

- (a) recreation leave or sick leave to which the employee is entitled under any Act or industrial award; and
- (b) prescribed holidays.

(2) Subsection (1) (b) does not apply to an employee who—

- (a) receives extra pay to cover prescribed holidays; or
- (b) does shift work and receives additional recreation days in place of prescribed holidays.

(3) If an employee is sick for a period of 3 or more days while on long service leave, that period is to be credited to the period of long service leave if—

- (a) the employee is entitled to be paid for that period of sickness as though the employee were at work; and
- (b) a medical certificate from a legally-qualified medical practitioner is provided relating to that sickness.

(4) An employee who is employed outside the State is to be treated as if the employee is employed in Hobart.

**Long service leave before commencement of Act**

**14—(1)** An employee who, immediately before the commencement of this Act, is entitled to be credited with a period of long service leave of less than 65 days is not entitled to be credited with a period of more than 100 days.

(2) An employee who, immediately before the commencement of this Act, is entitled to be credited with a period of long service leave of 65 days or more but less than 100 days is not entitled to be credited with a period of more than 100 days at the end of 3 years after that commencement.

(3) An employee who, immediately before the commencement of this Act, is entitled to be credited with a period of long service leave of 100 days or more is to reduce that period to no more than 100 days within 5 years of that commencement.

### **Forfeiture**

**15—(1)** An employee forfeits an entitlement to a period of long service leave in excess of 100 days if—

- (a) the entitlement is in excess of the periods allowed under section 14; or
- (b) the relevant Minister has not given permission under section 16 to retain that entitlement; or
- (c) the employee fails to reduce a period of long service leave accrued in excess of 100 days as required under section 14 (3).

(2) If a period of long service leave is not granted and as a result part or all of that leave is forfeited, the employee may apply to the Secretary to investigate the matter as a dispute under Part 4.

### **Excess long service leave**

**16—(1)** An employee may apply to the relevant Minister for permission to retain an entitlement to a period of long service leave in excess of 100 days.

(2) The relevant Minister may give permission under subsection (1) subject to such conditions as the Minister thinks fit.

### **Unpaid leave for part-time employees**

**17—(1)** A part-time employee is entitled to a period of unpaid leave in addition to paid long service leave calculated under section 12 (3).

(2) Any period of unpaid leave may be subject to prescribed conditions.

(3) Any period of unpaid leave in excess of 20 days is not to be taken into account in calculating the employee's entitlement to any sick leave, recreation leave, long service leave or other prescribed leave.

(4) Any period of unpaid leave together with any long service leave calculated under section 12 (3) is not to exceed any period of long service leave to which the employee would have been entitled had the employee been a full-time employee.

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### **PART 3**

#### **SALARY AND ALLOWANCES**

##### **Salary payable during long service leave**

**18**—An employee who is granted a period of long service leave is entitled to a salary which would be payable had the employee not taken long service leave during that period.

##### **Payment of salary in advance**

**19**—An employee who is granted a period of long service leave is to be paid in advance any salary payable for that period if the employee so requests.

##### **Allowances payable in certain cases**

**20**—(1) An employee or, if the employee dies, the employee's personal representative, is entitled to be paid an allowance calculated in accordance with subsection (2) if—

- (a) the employee has completed at least 7 years but less than 10 years of continuous employment and—
  - (i) ceases employment because of ill-health; or
  - (ii) resigns because of domestic or other pressing necessity; or
  - (iii) retires; or
  - (iv) is made redundant; or
  - (v) the contract of employment is not renewed; or

(vi) is dismissed for any reason other than serious and wilful misconduct; or

(vii) dies; or

(b) the employee has completed 10 years or more of continuous employment and ceases employment or dies.

(2) An allowance payable under this section is an allowance equal to the salary that would be payable for the period of long service leave to which the employee is entitled immediately before cessation of employment or death.

(3) The payment of an allowance under this section is to be authorized by the prescribed authority.

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## PART 4

### DISPUTES AND APPEALS

#### Disputes

21—(1) The Secretary is to investigate any dispute in relation to any matter arising under this Act including—

(a) an entitlement to long service leave or the payment of any allowance specified in section 20; or

(b) the refusal to grant all or part of a period of long service leave; or

(c) the commencement or termination date of continuous employment; or

(d) the length of employment; or

(e) the forfeiture of excess long service leave; or

(f) an entitlement of a personal representative of an employee to any allowance specified in section 20; or

(g) the length of employment or continuous employment by the Commonwealth or another State or a Territory of the Commonwealth; or

(h) the salary to which an employee who is granted leave is entitled.



(2) If a dispute is not resolved as a result of an investigation by the Secretary, the Secretary is to submit a report on the dispute to the President of the Commission.

(3) On receipt of a report on a dispute submitted under subsection (2), the President is to arrange for a Commissioner to hear and determine the dispute.

(4) After hearing a dispute, a Commissioner may make any of the following orders:—

- (a) that the prescribed authority grant the period of long service leave requested;
- (b) that the prescribed authority pay a specified allowance referred to in section 20 instead of granting the period of long service leave requested;
- (c) that the prescribed authority pay the employee an allowance referred to in section 20 in respect of the period of long service leave forfeited under section 15;
- (d) that the employee be credited with the period of long service leave forfeited under section 15;
- (e) that the forfeiture of a period of long service leave is confirmed;
- (f) that a long service leave record be amended to state a specific commencement or termination date;
- (g) that any specified period of leave of absence be included or excluded in calculating the length of employment;
- (h) that a personal representative is entitled to an allowance specified in section 20;
- (i) that any specified period of employment by the Commonwealth or another State or a Territory of the Commonwealth be treated as a period of continuous employment under this Act;
- (j) that the entitlement to salary during a period of long service leave includes or excludes any specified allowance.

(5) A Commissioner is to cause a copy of an order to be served on the Secretary and each party to the dispute.

(6) If an appeal is made under section 22, an order does not take effect until the appeal is determined or abandoned.

(7) A prescribed authority must comply with an order made under this section.

### **Appeals**

22—(1) A prescribed authority or employee who is aggrieved by an order of a Commissioner under section 21 may appeal within 21 days of service of the order to a Full Bench in a prescribed form.

(2) An appeal is to be instituted, heard and determined as prescribed.

(3) In determining an appeal, the Full Bench may—

(a) confirm the Commissioner's order; or

(b) revoke the Commissioner's order; or

(c) vary the Commissioner's order; or

(d) refer the matter to the Commissioner for reconsideration.

(4) A Full Bench is to cause a copy of its decision to be served on the Secretary and each party to the appeal.

(5) The decision of a Full Bench is final.

### **Representation**

23—(1) A person is not entitled to be represented by a barrister or practitioner at the hearing of a dispute under section 21 or the hearing of an appeal under section 22.

(2) If an officer or employee of an organization registered under Part V of the *Industrial Relations Act 1984* is a barrister or practitioner, the officer or employee may represent a person at a hearing referred to in subsection (1) if the officer or employee is employed to perform functions that may be performed by a person other than a barrister or practitioner.

(3) In this section—

“barrister” means a person admitted as a barrister under the *Legal Practitioners Act 1959*;

“practitioner” means a practitioner within the meaning of the *Legal Practitioners Act 1959*.

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## PART 5

### MISCELLANEOUS

#### Powers of inspectors

24—(1) For the purpose of ensuring that the provisions of this Act are complied with, an inspector may, at any reasonable time and with or without assistance, enter and remain in the premises of a State authority for a reasonable period.

(2) If an inspector enters any premises of a State authority, the inspector may—

(a) make such inspections, examinations and inquiries as are necessary; and

(b) question, with respect to matters under this Act, the person in charge of any premises so entered or any person employed or engaged on or in those premises; and

(c) require the person apparently in charge of those premises to produce for inspection by the inspector any books, documents or other records relating to a long service leave record kept under section 26.

(3) It is not lawful for an inspector to enter and remain on premises and to exercise any power under subsection (2) without providing, when requested to do so, evidence of appointment as an inspector.

(4) A person must not—

(a) prevent, obstruct, hinder or delay an inspector from exercising any powers under this section; or

(b) fail, without reasonable cause, to comply with a request of an inspector or to answer questions asked by an inspector made or asked under any such power if it is within the person's power to comply with the request or to answer the question; or

- (c) give an answer to such a question knowing the answer to be false or misleading; or
- (d) intentionally conceal, or attempt to conceal, a person from an inspector or prevent, or attempt to prevent, a person from appearing before, or being questioned by, an inspector for the purposes of this Act.

Penalty: Fine not exceeding 5 penalty units.

### **Delegation**

- 25—(1) A prescribed authority may, in writing—
- (a) delegate any of its powers or functions other than this power of delegation; or
  - (b) revoke wholly or partly a delegation.
- (2) A delegation—
- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
  - (b) does not prevent the performance or exercise of a function or power by the prescribed authority.
- (3) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by the prescribed authority.

### **Records**

26—A State authority is to keep a long service leave record in respect of each of its employees in such manner as the Secretary determines.

### **Act prevails**

27—This Act prevails over any other Act relating to the eligibility of employees for, or the entitlement of employees to, long service leave except any Act relating to a State authority which under section 6 is exempt from the provisions of this Act.

### Contracting out prohibited

28—Any covenant, agreement or arrangement made on or after the commencement of this Act which annuls, excludes or varies the provisions of this Act is of no effect.

### Regulations

29—(1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

### Repeal

30—(1) The Acts specified in Schedule 2 are repealed.

(2) A reference in any enactment to the *State Employees (Long-Service Leave) Act 1950* is a reference to the *Long Service Leave (State Employees) Act 1994*.

### Administration of Act

31—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Industrial Relations and Training; and
- (b) the Department responsible to that Minister in relation to the administration of this Act is the Department of Industrial Relations, Vocational Education and Training.

**Savings provision**

**32**—Any right, entitlement, privilege, obligation or liability acquired, accrued or incurred under the Acts specified in Schedule 2 before the commencement of this Act continue to exist as if those Acts were not repealed.

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## SCHEDULE 1

## Section 3

## PRESCRIBED AUTHORITIES

COLUMN 1 Employee or class of employees	COLUMN 2 Prescribed Authority
Employees employed in the Legislative Council	The President of the Legislative Council
Employees employed in the House of Assembly	The Speaker of the House of Assembly
Employees employed at Government House	The Official Secretary and Head of the Governor's Establishment
Employees employed under the <i>Dairy Industry Act</i> 1976	The Minister for the time being administering that Act
Employees employed under Part II of the <i>Fisheries</i> <i>Act 1959</i>	The Minister for the time being administering that Part
Employees employed by the Workers' (Occupational Diseases) Relief Fund Board	The Workers' (Occupational Diseases) Relief Fund Board
Employees employed by the Stanley Cool Stores Board	The Stanley Cool Stores Board
Employees employed under the <i>Tasmanian</i> <i>Development Act 1983</i>	The Tasmanian Development Authority
Employees employed under the <i>Police Regulation Act</i> 1898	The Commissioner of Police
Employees employed under the <i>Tasmanian</i> <i>Government Insurance</i> <i>Act 1919</i>	The Tasmanian Government Insurance Board
Employees employed under the <i>Hydro-Electric</i> <i>Commission Act 1944</i>	The General Manager, Hydro- Electric Commission

**SCHEDULE 2**

Section 30

**ACTS REPEALED**

Number and year of Act	Short title of Act
No. 81 of 1950 ...	<i>State Employees (Long-Service Leave) Act 1950</i>
No. 66 of 1979 ...	<i>State Employees (Long-Service Leave) Amendment Act (No. 3) 1979</i>

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*[Second reading presentation speech made in:—  
House of Assembly on 12 May 1993  
Legislative Council on 15 February 1994]*