

**ANTI-DISCRIMINATION (COMPULSORY RETIREMENT)  
AMENDMENT ACT 1990 No. 99**

NEW SOUTH WALES



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**ANTI-DISCRIMINATION (COMPULSORY RETIREMENT)  
AMENDMENT ACT 1990 No. 99**

NEW SOUTH WALES



**Act No. 99, 1990**

An Act to amend the Anti-Discrimination Act 1977 to make unlawful compulsory retirement from employment on the ground of age; to make consequential amendments to other Acts; and for other purposes. [Assented to 13 December 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Anti-Discrimination (Compulsory Retirement) Amendment Act 1990.

**Commencement**

2. This Act commences on 1 January 1991.

**Amendment of Anti-Discrimination Act 1977 No. 48**

3. The Anti-Discrimination Act 1977 is amended as set out in Schedule 1.

**Consequential amendment of Public Sector Management Act 1988 No. 33**

4. The Public Sector Management Act 1988 is amended as set out in Schedule 2.

**Consequential amendment of superannuation legislation**

5. Each Act specified in Schedule 3 is amended as set out in that Schedule.

**Consequential amendment of other Acts**

6. Each Act specified in Schedule 4 is amended as set out in that Schedule.

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**SCHEDULE 1 - AMENDMENT OF ANTI-DISCRIMINATION  
ACT 1977**

(Sec. 3)

(1) Part 4E:

Before Part 5, insert:

SCHEDULE 1 - AMENDMENT OF ANTI-DISCRIMINATION  
ACT 1977 - *continued*

**PART 4E - COMPULSORY RETIREMENT FROM  
EMPLOYMENT ON THE GROUND OF AGE**

**Application of Part**

49ZU. (1) This Part applies to and for the benefit of employees specified in the following paragraphs on and from the dates specified:

- (a) 1 January 1991 - persons who are employed in the public sector, other than persons specified in paragraph (c);
- (b) 1 January 1992 - employees of a county council or a council of an area within the meaning of the Local Government Act 1919;
- (c) 1 January 1993 - persons who are:
  - (i) employed in the public sector in fire fighting or fire prevention; or
  - (ii) employed at a State coal mine under the Electricity Commission Act 1950;
- (d) 1 January 1993 - all other employees in New South Wales whether or not employed subject to an award or agreement.

(2) This Part applies despite any compulsory retirement age fixed by an award or agreement made before, on or after 1 January 1991. Section 54 does not affect the operation of this subsection.

(3) In this Part:

**"award or agreement"** means an award or agreement within the meaning of the Industrial Arbitration Act 1940;

**"employed in the public sector"** means:

- (a) employed in the Public Service or a Teaching Service; or
- (b) employed in the Police Service otherwise than as a police officer; or

SCHEDULE 1 - AMENDMENT OF ANTI-DISCRIMINATION  
ACT 1977 - *continued*

(c) employed in the service of a public authority  
or

(d) holding a statutory office;

"**employee**" includes a commission agent and a contract  
worker.

(4) In the operation of this Part in relation to the  
retirement of an employee or class of employees, the  
meaning of retirement may vary according to the particular  
circumstances. However, the regulations may make  
provision for or with respect to circumstances which are to  
constitute retirement for the purposes of this Part or  
circumstances which are not to constitute retirement for  
such purposes or both.

**Compulsory retirement unlawful**

49ZV. It is unlawful for a person:

(a) to retire an employee from employment; or

(b) to require an employee to retire from employment;  
or

(c) to threaten to retire an employee from  
employment; or

(d) to engage in conduct with a view to causing an  
employee to retire from employment,

on the ground of the employee's age.

**Provision requiring retirement on basis of age of no effect**

49ZW. (1) A provision of an Act or statutory instrument  
which

(a) relates to a person employed in the public sector;  
and

(b) requires the person to retire from, or to vacate,  
office on or after reaching a specified age,

is of no effect if, under this Part, it is unlawful for the  
person to be retired from employment.

SCHEDULE 1 - AMENDMENT OF ANTI-DISCRIMINATION  
ACT 1977 - *continued*

(2) This section applies except to the extent, if any, prescribed by regulation made under this Act.

(3) Section 54 does not affect the operation of this subsection.

**Exceptions to this Part**

49ZX This Part does not apply to the retirement of the following persons:

- (a) a judicial officer within the meaning of the Judicial Officers Act 1986;
- (b) a police officer;
- (c) an officer who cannot be removed from office except following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament and who is not appointed for a term;
- (d) a person or the holder of an office prescribed by regulation made under this Act.

(2) Section 72 (**Appointment of members**):

Omit "2", insert instead "4".

(3) Section 75 (**Vacation of office**):

From section 75 (f1), omit "or is retired from office by the Governor pursuant to section 80 (5)".

(4) Section 80 (**President**):

Omit section 80 (5).

**SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PUBLIC SECTOR MANAGEMENT ACT 1988**

(Sec. 4)

(1) Section 30 (**Appointment of retired officers**):

Omit section 30 (4).

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PUBLIC SECTOR MANAGEMENT ACT 1988 - *continued*

- (2) Section 35 (**Retirement of officers**):  
Omit the section.
- (3) Section 42O (**Vacation of executive positions**):  
From section 42O (1) (c), omit "or is retired".
- (4) Section 42P (**Retirement of executive officers**):  
Omit the section.
- (5) Section 42R (**Right to return to public sector for certain executive officers**):  
Omit section 42R (5), insert instead:  
(5) A person is not entitled to an engagement in the public sector under this section if the person ceased to be an executive officer because the person resigned or was (after due inquiry) removed from office for misbehaviour.
- (6) Section 42S (**Compensation etc. where executive officer has no right to return to public sector**):
- (a) Omit section 42S (1) (c).
- (b) From section 42S (1) (d), omit “, who has not reached the age of 60 years”.
- (c) Omit section 42S (4), insert instead:  
(4) The maximum compensation payable is an amount equal to the person's remuneration package for the period of one year.
- (7) Section 91 (**Re-appointment to public sector following removal of term appointee**):  
From section 91 (1), omit "and who has not reached the age of 60 years".

SCHEDULE 2 - CONSEQUENTIAL AMENDMENT OF  
PUBLIC SECTOR MANAGEMENT ACT 1988 - *continued*

- (8) Section 92 (**Compensation for office holder following removal**):
- (a) Omit section 92 (1), insert instead:
    - (1) This section applies to a person who (being a term appointee):
      - (a) is removed from an office under section 90; and
      - (b) is not entitled to be engaged in the public sector under section 91,but does not apply to a person who held the office concerned on a part-time basis.
  - (b) From section 92 (3), omit "or retirement" wherever occurring except in paragraph (c).
  - (c) From section 92 (3) (b), omit "expired; or", insert instead "expired,".
  - (d) Omit section 92 (3) (c).
  - (e) From section 92 (5), omit "or retirement".
- (9) Schedule 7 (**Savings, transitional and other provisions**):
- (a) Part 1, clause 2 (**Savings and transitional regulations**):  
At the end of clause 2 (1), insert:  

Anti-Discrimination (Compulsory Retirement) Amend-  
ment Act 1990.
  - (b) At the end of the Schedule, insert:  

Anti-Discrimination (Compulsory Retirement) Amend-  
ment Act 1990

25. The amendments made by Schedule 2 to the Anti-Discrimination (Compulsory Retirement) Amend-ment Act 1990 do not apply to a person referred to in section 49ZU (1) (c) of that Act before 1 January 1993.



SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION

(Sec. 5)

**Superannuation Act 1916 No. 28**

- (1) Section 21 (Age of retirement):  
Omit section 21 (2).

- (2) Part 4, Division 3B:

after Division 3A of Part 4, insert:

Division 3B - Deferral or preservation of  
benefit for contributors aged 55 years  
and over in certain circumstances

**Eligible contributors**

52L. This Division applies to a person who is a contributor:

- (a) who is of or above the age of 55 years; and
- (b) who, since attaining that age, has undergone a salary reduction of 20% or more on at least one occasion; and
- (c) whose employer certifies the matters referred to in paragraphs (a) and (b).

**Exit day**

52M. In this Division, "exit day", in relation to a person to whom this Division applies, means the day immediately preceding the day on which the person's salary was reduced by 20% or more.

**Election to defer or preserve a benefit**

52N. (1) A person to whom this Division applies may elect:

- (a) if the person would have been entitled to be paid a benefit under section 21 (1) or 21 (1B) had he or she ceased employment on his or her exit day - to defer that benefit (in this Division termed "a deferred benefit") in accordance with this Division; or

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - *continued*

(b) in any other case - to preserve a benefit provided for by Division 3A which benefit is to be dealt with in accordance with that Division.

(2) When a person has made a valid election under subsection (1) (b), a benefit is not payable to, or in respect of, that person:

- (a) under any other provision of this Act; and
- (b) unless that person has ceased employment or has died.

**Date of deferral or preservation of benefit**

52O. A benefit referred to in this Division is deferred or preserved from the exit day.

**Calculation of value of deferred benefit**

52P. The initial value of a deferred benefit is to be calculated in accordance with Division 2 as if the person had retired.

**Election to commute deferred benefit**

52Q. (1) A person who has made a valid election under section 52N (1) (a) may elect to commute the whole or part of his or her pension benefit in accordance with sections 21C and 21D, except that:

- (a) sections 21C (5) and (6) and 21D (4) do not apply with respect to such an election; and
- (b) the election must be made by the person within 3 months after his or her exit day.

(2) A person may not amend or withdraw an election to commute, in whole or in part, a deferred benefit made under this Division.

**Adjustment of deferred benefit**

52R. A deferred benefit is to be adjusted:

- (a) as to the pension component of the benefit - in accordance with Division 6; and

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - continued

- (b) as to the commuted component of the benefit - in accordance with section 21E.

**When deferred benefit is payable**

52S. A deferred benefit is to be paid on the happening of any of the following:

- (a) the person in respect of whom a benefit is payable applying for payment of the benefit following resignation, retirement or any other cessation of employment;
- (b) the death of the person in respect of whom a benefit is payable.

**Payment of deferred benefit**

52T. (1) A deferred benefit is to be paid in accordance with this section.

(2) In a case other than death of the person to whom this Division applies, payment is to be made to the person of the deferred pension, if any, and the deferred commuted component, if any, adjusted in accordance with this Division.

(3) If the person to whom this Division applies dies and is survived by a spouse, payment is to be made to the spouse of:

- (a) a fortnightly pension at the rate of two-thirds of the pension, as adjusted, which would have been payable to the person, on the day immediately preceding the day of the person's death, if no election to commute any part of the person's benefit had been made; and
- (b) where applicable, the deferred commuted component, as adjusted, which would have been payable to the person had the person retired on the day immediately preceding the day of the person's death; and
- (c) amounts in accordance with this Act in respect of any eligible children.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - continued

(4) If the person to whom this Division applies dies and is not survived by a spouse, payment is to be made:

(a) to the estate of the deceased of:

(i) where applicable, the deferred commuted amount, as adjusted; or

(ii) an amount calculated in accordance with section 38A which would have been payable to the person on the day immediately preceding the day of the person's death, whichever is the greater; and

(b) of amounts in accordance with this Act in respect of any eligible children.

**Board to apportion benefit**

52U. When a benefit is deferred in accordance with this Division, section 33B applies.

Break in service

52V. When a benefit is deferred in accordance with this Division, section 38C does not apply.

(3) Section 93 (**Members of authorities not to be liable to be compulsorily retired on attaining 60 years of age**):

Omit the section.

**State Authorities Superannuation Act 1987 No. 211**

(1) Section 43AA:

Before section 43A, insert:

**Preservation of benefit for contributors aged 55 years and over in certain circumstances**

43AA. Part 2 of Schedule 5 has effect with respect to the preservation of the benefit of a contributor of or above the age of 55 years in the circumstances specified in that Part.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - *continued*

(2) Schedule 5 (**Special provisions for preserving the benefits of certain contributors**):

(a) After the heading to the Schedule, insert:

**PART 1 - TRANSFERRED CONTRIBUTORS OR  
CONTRIBUTORS ELECTING OR REQUIRED TO  
JOIN ANOTHER SUPERANNUATION SCHEME**

(b) From clauses 1 (1) and (2), 2,3 and 4 (1), omit "Schedule" wherever occurring, insert instead "Part".

(c) From clause 4 (2), omit "Schedule" where firstly and thirdly occurring, insert instead "Part".

(d) At the end of the Schedule, insert:

**PART 2 - PRESERVATION OF BENEFIT FOR  
CONTRIBUTORS AGED 55 YEARS AND OVER  
IN CERTAIN CIRCUMSTANCES**

**Eligible contributors**

5. This Part applies to a contributor:

- (a) who is of or above the age of 55 years; and
- (b) who, since attaining that age, has undergone a salary reduction of 20% or more on at least one occasion; and
- (c) whose employer certifies the matters referred to in paragraphs (a) and (b).

**Exit date**

6. In this Part, "exit date", in relation to a contributor to whom this Part applies, means the date immediately preceding the date on which the contributor's salary was reduced by 20% or more.

**Election to preserve benefit**

7. A contributor to whom this Part applies may elect to make provision for a benefit under section 43.

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - *continued*

**Date of preservation of benefit**

8. The benefit is preserved from the exit date.

**Calculation of value of preserved benefit**

9. (1) The initial value of a preserved benefit is to be calculated in accordance with section 43 as if the contributor had ceased employment.

(2) If a contributor has attained the early retirement age before the exit date, for the purpose of calculating the value of the employer-financed benefit to be preserved under subclause (1), "K" in the formula in section 43 (6) (b) is to equal one.

**When preserved benefit is payable**

10. A benefit preserved under this Part may only be paid in accordance with section 43 and then only if the person in respect of whom the benefit is payable has ceased employment or has died.

**State Authorities Non-contributory Superannuation Act 1987 No. 212**

(1) Section 24A:

After section 24, insert:

**Preservation of benefit for employees aged 55 years and over in certain circumstances**

24A. Schedule 3 has effect with respect to the preservation of the benefit of an employee of or above the age of 55 years in the circumstances specified in that Schedule.

(2) Schedule 3:

After Schedule 2, insert:

SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - *continued*

**SCHEDULE 3 - PRESERVATION OF BENEFIT FOR  
EMPLOYEES AGED 55 YEARS AND OVER IN  
CERTAIN CIRCUMSTANCES**

(Sec. 24)

**Eligible employees**

1. This Schedule applies to an employee:
  - (a) who is of or above the age of 55 years; and
  - (b) who, since attaining that age, has undergone a salary reduction of 20% or more on at least one occasion; and
  - (c) whose employer certifies the matters referred to in paragraphs (a) and (b).

**Exit date**

2. In this Schedule, "exit date", in relation to an employee to whom this Schedule applies, means the date immediately preceding the date on which the employee's salary was reduced by 20% or more.

**Election to preserve benefit**

3. An employee to whom this Schedule applies may elect to preserve his or her benefit under this Act in accordance with this Schedule.

**Date of preservation of benefit**

4. The benefit is preserved from the exit date.

**Calculation of value of preserved benefit**

5. The value of a preserved benefit in respect of an employee to whom this Schedule applies is to be calculated in accordance with section 25 as if the employee had ceased employment.

**SCHEDULE 3 - CONSEQUENTIAL AMENDMENT OF  
SUPERANNUATION LEGISLATION - *continued***

**When preserved benefit is payable**

6. A benefit preserved under this Schedule may only be paid in accordance with section 24 and then only if the person in respect of whom the benefit is payable has ceased employment or has died.

**SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS**

(Sec. 6)

**Baptist Churches of New South Wales Property Trust Act 1984 No. 4**

**Section 9 (Vacation of office):**

Omit section 9 (e).

**Commercial Tribunal Act 1984 No. 98**

(1) **Section 6 (Persons disqualified from appointment):**

Omit section 6 (1).

(2) **Section 12 (Vacation of office of member):**

Omit section 12 (1) (b).

**Consumer Claims Tribunal 1987 No. 206**

**Schedule 1 (Provisions relating to referees):**

(a) Omit clause 1.

(b) From clause 6 (1) (d), omit "or retired".

(c) Omit clause 6 (1) (e).

(d) Omit clause 6 (3).

(e) From clause 10 (1) (b) (ii), omit "body, and", insert instead "body,".

(f) Omit clause 10 (1) (c).



SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - continued

**Crown Advocate Act 1979 No. 59**

(1) Section 3 (Appointment of Crown Advocate):

Omit section 3 (3).

(2) Section 6 (**Vacation of office**):

(a) From section 6 (1) (d), omit "Governor.", insert instead "Governor; or".

(b) Omit section 6 (1) (e).

(c) From section 6 (1) (f), omit "office; or", insert instead "office".

(d) Omit section 6 (1) (g).

(e) Omit section 6 (3).

**Crown Prosecutors Act 1986 No 208**

(1) Section 8 (**Eligibility for appointment**):

Omit the section.

(2) Section 9 (**Vacation of office**):

(a) In section 9 (1) (b), after "Governor;", insert "or".

(b) Omit section 9 (1) (c).

**Director of Public Prosecutions Act 1986 No. 207**

Schedule 1 (**Provisions relating to senior officers**):

(a) Omit clause 2 (1).

(b) In clause 4 (1) (b), after "Governor;", insert "or".

(c) Omit clause 4 (1) (c).

(d) From clause 11 (1) (b) (ii), omit "body; and", insert instead "body".

(e) Omit clause 11 (1) (c).

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - *continued*

**Education (Ancillary Staff) Act 1987 No. 240**

**Section 15 (Retirement of permanent employees):**

Omit the section.

**Fisheries and Oyster Farms Act 1935 No. 58**

**Section 41C (Transfer of rights, liabilities and property to Authority):**

From section 41C (2) (f) (iii) (b), omit "or by reason of his attaining the age of sixty-five years".

**Government and Related Employees Appeal Tribunal Act 1980 No. 39**

(1) **Section 10 (Chairperson):**

In section 10 (2), after "and" where secondly occurring, insert ", if the person is a Judge of the Supreme Court or a member of the Industrial Commission of New South Wales, the person".

(2) **Schedule 1 (Provisions relating to the offices of senior chairperson and chairperson):**

(a) In clause 9 (f), after "Governor;", insert "or".

(b) From clause 9 (g), omit "clause 8; or", insert instead "clause 8".

(c) Omit clause 9 (h).

**Growth Centres (Development Corporations) Act 1974 No. 49**

**Schedule 2 (Provisions relating to the constitution and procedure of development corporations):**

(a) Omit clause 2.

(b) In clause 6 (1) (i), after "office;", insert "or".

(c) From clause 6 (1) (j), omit "Governor; or", insert instead "Governor".

(d) Omit clause 6 (1) (k).

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - *continued*

**Indecent Articles and Classified Publications Act 1975 No. 32**

**Section 15 (Publications Classification Board):**

- (a) Omit section 15 (4).
- (b) In section 15 (6) (d), after "Minister;", insert "or".
- (c) Omit section 15 (6) (e).

**Land and Environment Court Act 1979 No. 204**

**Schedule 1 (The assessors):**

Omit clauses 4 and 5.

**Law Foundation Act 1979 No. 32**

(1) **Section 10 (Appointment and term of office):**

Omit section 10 (2).

(2) **Section 13 (Vacation of office of Director):**

- (a) In section 13 (f), after "office;", insert "or".
- (b) From section 13 (g), omit "section 12 (1); or", insert instead "section 12 (1)".
- (c) Omit section 13 (h).

**Law Reform Commission Act 1967 No. 39**

**Section 9 (Removal and vacation of office):**

- (a) Omit section 9 (2B).
- (b) Omit section 9 (3).

**Motor Accidents Act 1988 No. 102**

**Schedule 2 (Constitution and procedure of the Board of Directors of the Authority):**

- (a) Omit clause 2.
- (b) From clause 7 (1) (h), omit "punishable; or", insert instead "punishable".
- (c) Omit clause 7 (1) (i).

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - *continued*

**Motor Vehicle Repairs Act 1980 No. 71**

**Schedule 1 (Provisions relating to the constitution and membership of the Council):**

- (a) Omit clause 1.
- (b) Omit clause 10 (1) (i).
- (c) In clause 10 (1) (j), after "office;", insert "or".
- (d) From clause 10 (1) (k), omit "cause; or", insert instead "cause."
- (e) Omit clause 10 (1) (1).
- (f) Omit clause 10 (2).

**Non-Indigenous Animals Act 1987 No. 166**

**Schedule 1 (Provisions relating to the members of the advisory committee):**

- (a) Omit clause 1.
- (b) In clause 6 (1) (f), after "Minister;", insert "or".
- (c) Omit clause 6 (1) (g).

**Prices Regulation Act 1948 No. 26**

- (1) **Section 4F (Commissioner attaining 70 years of age):**  
Omit the section.
- (2) **Section 4H (Vacation of office):**
  - (a) In section 4H (g), after "Governor;", insert "or".
  - (b) From section 4H (h), omit "Governor; or", insert instead "Governor."
  - (c) Omit section 4H (i).

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - *continued*

**Public Defenders Act 1969 No. 60**

Section 3 (**Public Defenders**):

- (a) Omit section 3 (3).
- (b) In section 3 (6) (d), after "1958;", insert "or".
- (c) From section 3 (6) (e), omit "Governor, or", insert instead "Governor".
- (d) Omit section 3 (6) (f).

**Public Hospitals Act 1929 No. 8**

(1) Section 29G (**Board**):

Omit section 29G (9) and (10).

(2) Section 40AB (**Chief executive officers of incorporated hospitals**):

- (a) Omit section 40AB (3) and (6).
- (b) In section 40AB (7) (b), after "Secretary", insert "or".
- (c) Omit section 40AB (7) (c).
- (d) From section 40AB (7) (d), omit "or retired".

(3) Section 40B (**Chief executive officers and matrons of hospitals**):

Omit section 40B (1) (b) and (2).

(4) Section 40C (**Directors of separate institutions - vacation of office**):

Omit the section.

**Public Trustee Act 1913 No. 19**

Section 5 (**Office of Public Trustee**):

- (a) Omit section 5 (3) (b).
- (b) Omit section 5 (3A).

SCHEDULE 4 - CONSEQUENTIAL AMENDMENT OF  
OTHER ACTS - *continued*

**Solicitor General Act 1969 No. 80**

Section 2 (**Appointment of Solicitor General**):

- (a) Omit section 2 (2).
- (b) In section 2 (5) (d), after "Governor;", insert "or".
- (c) Omit section 2 (5) (e).

**Teaching Services Act 1980 No. 23**

- (1) Section 49 (**Appointment of retired officers**):  
Omit section 49 (3).
- (2) Section 57 (**Appointment of retired officers**):  
Omit section 57 (3).
- (3) Section 77 (**Retirement of officers through age**):  
Omit the section.

**Wine Grape Processing Industry Act 1979 No. 87**

Schedule 3 (**Provisions relating to wine grape processing industry arbitrators**):

- (a) Omit clause 2 (1).
  - (b) From clause 2 (3), omit "or until he attains the age of 70 years, whichever first occurs".
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*[Minister's second reading speech made in -  
Legislative Assembly on 22 November 1990  
Legislative Council on 30 November 1990]*