



Training Workbook

# Basic Prior Service

Participant's Guide

# **POP**

## **Personnel Operations Program**

**This Training Course was produced by**

**POP Team  
GPO Box 9879  
Canberra ACT 2601**

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## OVERVIEW

### Aim

This course has been designed to provide Personnel staff with an understanding of the principles behind the recognition of prior service, to enable them to process straight forward requests for the recognition of prior service and to advise employees of their entitlements.

### Target Audience

This course is intended for Personnel staff who process prior service requests and subsequently re-calculate leave accruals. It is expected that participants will have experience in calculating leave accruals, and have a working knowledge of the effects of leave without pay on conditions of service.

The training workbook is designed to provide participants with an outline of the legislative basis for the processing of prior service as well as the procedures involved. It is structured to provide participants with practical exercises and theory.

### Note

- The general conditions of employment contained in this workbook are based on the APS Award 1998 (the minimum award applying in the APS) and other relevant legislation.
- If an agency has displaced the APS Award in their Collective Agreement, then the only authority applying is the agency Collective Agreement (CA) and other relevant legislation (which cannot generally be displaced by a CA).
- Agencies whose employment arrangements come under the *Public Service Act 1999* may have their own determinations on pay and conditions matters.
- *It is important to know which provisions apply in your agency.*

## REFERENCES

Agency Collective Agreement (CA)

Australian Workplace Agreement (AWA)

*Long Service Leave (Commonwealth Employees) Act 1976* and Regulations

Australian Public Service Award 1998 (APS Award), clause 28.6 (Employees engaged for a specified term or specified task)

PS Determination 1998/5 (some provisions applicable prior to 5 December 1999, Chapter 4 cl 4.55-4.59 and 4.69)

The Guide to APS Pay and Conditions of Employment, Part Two, Section 1 and Appendix 4: Recognition of Prior Service (useful for historical information and good practice guidance)

The e-Guide (general information on long service leave and prior service)

*Australian Capital Territory Government Service (Consequential Provisions) Act 1994*

*Public Employment (Consequential and Transitional) Amendment Act 1999*

**Note:** The e-Guide was previously available on subscription from DEEWR but is no longer offered. The e-Guide replaced The Guide, APS Pay and Conditions of Employment, which may provide useful guidance on some topics.

## DEFINITION OF TERMS

### Prior Service

Prior service is a previous period, or previous periods, of employment with one or more approved employers. Recognition of prior service with approved employers gives employees credit for previous service for the purposes of personal carer's leave and/or long service leave.

### Approved Employer

An approved employer is a public employer such as:

- a Commonwealth Department or Authority
- a State Department
- an authority of a State (including a local governing body such as a shire council, or municipal council)
- a public service (including an authority) of a Commonwealth Territory.

Approved employers are defined in Sections 10, 11 and 13 of the *Long Service Leave (Commonwealth Employment) Act 1976* (LSL Act) and in Long Service Leave Regulations 4E, 7 and 8. A number of approved employers are also listed in Long Service Leave Regulations Schedules 1A, 1 and 2. However, this list is not comprehensive and it is up to individual agencies to establish whether a particular employer fits the definition of an approved employer. This may require obtaining legal advice on the status of a particular employer.

To establish whether service with a particular employer can be recognised for prior service under the LSL Act three key elements need to be considered. These are:

- government service
- prior service, and
- continuous service.

Government service includes service under a law or contract (whether full-time or part-time), and employment of a person who is acting as a public authority, (refer to LSL Act s.10).

Prior service is defined in the LSL Act ss.11(2) and includes service with the Commonwealth, State service (or authority including local government authority) and other organisations prescribed under ss.7(2) of the LSL Act.

Continuous service is defined in s.12 of the LSL Act as qualifying service where any break does not exceed 12 months.

## **Leave Without Pay Not To Count As Service (LWOP NTCAS)**

LWOP NTCAS is a period of approved unpaid leave which does not count as service for any purpose. It is counted in calendar days and includes the weekend where the LWOP ends on a Friday. For example, leave without pay from Monday 5 September 2005 to Friday 14 October 2005 is counted as 42 calendar days leave as it includes all weekends in the total period of leave not to count as service.

## **Acceptable Employment**

Types of employment that may be recognised for prior service purposes include:

- full-time ongoing (permanent) and/or non-ongoing (temporary) service with an approved employer, which is recognised for long service leave and personal carers leave purposes
- for long service leave purposes, all part-time service with an approved employer, which is recognised
- for personal carer's leave purposes there are three conditions relevant to prior part-time service:
  1. any part-time service before 1 March 1990 does not count as service for personal carer's leave purposes
  2. for periods of service between 1 March 1990 and 15 July 1991(inclusive) any part-time service with an approved employer counts
  3. periods of service after 15 July 1991 can be recognised for personal carer's leave purposes if the person was working at least 24 hours per week and on at least 4 days per week.

### **Note**

The provisions for carers leave have changed since the introduction of the Standard on the 27 March 2006. This provision effectively separated the entitlement to carers leave from the entitlement to personal leave.

## **Employment not recognised for Prior Service Purposes**

Any period of service during which an employee was:

- employed in an honorary capacity, or
- remunerated by way of fees, allowances or commission only;

may not be recognised for prior service.

**Exercise 1**

*Where would this be located.*

What is the authority for recognition of prior service for personal carer's leave (or sick leave) in your agency?

.....  
.....  
.....

What conditions are prescribed by your provisions?

.....  
.....  
.....  
.....  
.....  
.....



## RECOGNISING PRIOR SERVICE

Although employees have to request that their prior service be recognised, some may not be aware of their entitlements, so during induction all new starters should be asked whether they have had any previous service which may count for sick/personal carer's leave or long service leave purposes. If so, a list of their previous employers and dates of employment should be requested if possible.

Delays in verifying details can result in protracted searches through archived files, and problems with incomplete or destroyed records.

Agencies may use a pro forma letter which asks employers for details of former employees' leave and salary entitlements specifically for prior service purposes. A letter should be sent to each identified employer requesting the required details. It may be possible to ascertain from the information supplied by the employee which periods of service can be recognised.

The onus is on the employee to demonstrate that they have service which counts for LSL or personal carer's leave purposes. As the gathering of such information can be quite time-consuming, it is worth considering giving the employee information about what is required by way of evidence so that they may seek the evidence themselves. A pro forma is provided at the back of this workbook.

Once a letter is received from the employer concerned, it is necessary to establish which periods of service can be recognised. Because of the different breaks in service allowed, some service may be recognised for long service leave, but not for personal carer's (or sick) leave.

### Procedures for Recognition

The following points should be checked when dealing with prior service applications:

- Is the previous employer an approved employer or do they fit the criteria for organisations set out in the LSL Act and Regs?
- When requesting prior service information, is there enough information to allow former employers to identify the person? (e.g. change of name; common name requiring more details such as date of birth; approximate period of employment).
- Does the former employer now operate under a different name; has it amalgamated with another agency; is it a State or Commonwealth agency?
- Do the periods of employment meet the continuity requirements? Special consideration needs to be given to the reason employment ceased e.g. non-ongoing employment ceased due to agency requirements
- Was the type of employment eligible, e.g. not paid by fees or allowances?
- Does verification give sufficient details? For example, dates of employment, full/part-time service, leave not to count as service, LSL taken or paid in lieu, and personal carer's leave taken
- Has recognition of service for personal carer's leave and LSL purposes been approved by the appropriate delegate?

The procedures used in processing prior service applications may vary between agencies depending on any provisions in the relevant CA or agency guidelines.

Leave records must be noted and amended, and the employee advised of leave balances and new credit date. If the employee has less than 10 years service, advise anticipated due date of initial LSL credit.

## RECOGNITION FOR PERSONAL CARER'S LEAVE

Under the APS Award, employees engaged in an intermittent or irregular capacity may receive a 20% loading in recognition of the irregular nature of their work. Employees who receive the loading are not entitled to any payment for annual leave, personal carer's leave, maternity leave, war service sick leave, jury duty or public holidays. Service in which this loading was received cannot be recognised as prior service for sick leave purposes (but may be recognised for long service leave purposes). Also note the relevant dates for acceptable part-time employment as described in the definitions.

In other respects recognition of prior service for personal carer's leave purposes is dependant upon provisions in the particular agency.

Detailed below are the provisions of the former PS Determination 1998/5 which applied service wide until 5 December 1999. This determination became an agency determination after the *Public Service Act 1999* came into effect, and agencies could revoke or amend the determination. Unless the determination was revoked or amended by an agency, it ceased to apply altogether from 5 December 2002. These or similar provisions may apply if an agency has incorporated them into their CA or in an agency determination or other guidelines.

### ***Ongoing Employees***

Prior service for ongoing employees may be recognised for personal carer's leave purposes where there has been no break exceeding 2 months and the employment was with an eligible employer.

Where there has been a break in service or a period of ineligible service which breaks continuity for personal carer's leave purposes, any other service before the disallowed period of employment will also be ineligible.

### ***Non-ongoing Employees***

Recognition of prior service for personal carer's leave for non-ongoing employees will at times be required. Due to the nature of their employment, these employees are more likely to have worked in numerous agencies for varying periods.

Under the APS Award this service may be recognised if it was continuous. The APS Award 28.6.1.g defines "continuous" service for personal carer's leave as 12 months service in 14 months, and any breaks must have been due to the requirements of the APS (i.e. the contract went to term or was terminated early for operational reasons).

Use of prior service to bring forward the 44 days for initial accrual is not specifically included, but may be inferred from Clause 28.6.1.g (defining continuous service) and Clause 28.6.1.d (containing the phrase '*during the first 12 months of continuous service*').

If prior service is recognised, the limited accruals within the first year apply until 12 months service in 14 months has been reached. It is not necessary to wait until 14 months once the 12 months has been reached.

For example: An employee completes a three month contract with Agency A on 9 February 2006, without using any personal/carer's leave. On 27 February 2006 he starts a 4 week contract with Agency B – if prior service from Agency A is recognised, he would have 6 days accrual available on commencement.

### Establishing a Personal/Carer's Leave Credit

In accordance with the provisions governing prior service, recognised periods of service with eligible employers are treated as if the whole period of service was with the gaining agency and therefore that agency's conditions apply.

An employee does not have to have their service recognised for personal carer's leave purposes if it would be disadvantageous to do so. This may occur where a person's personal carer's leave usage during their prior service exceeded their entitlement calculated in accordance with current agency provisions. This does not affect recognition of prior service for long service leave purposes.

The first step in crediting prior service is to first calculate a "new" commencement date. The following example demonstrates how to establish a personal carer's leave credit for an employee with recognised prior service:

#### Example 1

Mary Davis was engaged as an ongoing employee in your agency on 6 December 2005. She has had the following periods of service and wishes to have them recognised for personal carer's leave purposes:

Employer	Period	Personal Carer's Leave Taken
ANU	11.1.99 – 25.7.02	1 week 4 days sick leave @ full pay
DPIE	11.8.02 – 4.11.05	3 days sick leave @ full pay

Ms Davis had taken no LWOP during these periods of employment and the total leave taken was 2 weeks and 2 days on full pay.

*Calculate the personal/carer's leave credit using the following steps*

*Step 1 - calculate the number of calendar days break in service between all the periods of employment (inclusive days):*

<u>815</u>	
26.7.02 - 10.8.02	16 days
5.11.05 - 5.12.05	<u>31 days</u>
<b>Total breaks</b>	<b>47 days</b>

*Step 2 – calculate the new notional commencement date*

Ms Davis first commenced in eligible employment at the ANU on 11.1.99, defer her actual commencement date by the total break in service:

**11.1.99 plus 47 calendar days = 27.2.99**

*Step 3 – calculate the credit*

Ms Davis is credited with accumulated sick leave for each completed year of service using the notional commencement date i.e. 27.2.99.

For the purposes of this example, your agency grants personal/carer's sick leave in accordance with the APS Award, clause 28, i.e. 10 days full pay and 10 days half pay sick leave on engagement and on completion of each 12 month period of service (cumulative) and 3 days bereavement leave (non cumulative).

Therefore the accumulated personal/carer's leave credits are as follows:

<u>Accrual date</u>	<u>Personal/carer's leave</u>	<u>Sick leave @ f/p</u>	<u>Sick leave @ h/p</u>
27.2.99		10 days	10 days
27.2.00		10	10
27.2.01		10	10
27.2.02		10	10
27.2.03		10	10
27.2.04		10	10
27.2.05	13 days (10 days cum + 3 days non-cum)		10
<b>Total</b>	<b>13 days</b>	<b>60 days</b>	<b>70 days</b>

*Step 4 – deduct any leave taken during prior service*

Ms Davis took a total of 2 weeks and 2 days (or 12 days) personal sick leave on full pay. Deduct this from the total accumulated sick leave balance (note that any personal carer's or sick leave taken without pay is disregarded).

<u>Accrual date</u>	<u>Personal/carer's leave</u>	<u>Sick leave @ f/p</u>	<u>Sick leave @ h/p</u>
Balance b/f	13 days	60 days	70 days
less taken	0	12 days	0
<b>Total</b>	<b>13 days</b>	<b>48 days</b>	<b>70 days</b>

*Step 5 – total credits on commencement (6.12.05)*

<u>Accrual date</u>	<u>Personal/carer's leave</u>	<u>Sick leave @ f/p</u>	<u>Sick leave @ h/p</u>
<b>Total credits</b>	<b>13 days (10 cum + 3-non cum)</b>	<b>48 days</b>	<b>70 days</b>

Next accrual date      27 February 2006      (subject to any LWOP deferral)

### Assumed Usage of Personal Carer's Leave

There may be instances when service with an eligible employer can be verified, but no personal carer's leave records have been kept or found. This does not prevent the service from being recognised for personal carer's leave purposes in the normal manner, however some adjustment is required to the credit established.

As for all recognised prior service, personal carer's leave credits are to be calculated as though all service had been with the gaining agency. From the credit so established, a notional 5 days full pay personal carer's leave is deducted for each complete year of eligible service or 1.25 days for each complete 3 month period. This is known as assumed, or notional usage of personal carer's leave.

Employees with prior service in the Australian Defence Force do not have personal carer's leave records as these are not kept by the ADF.

#### Example 2

An employee who commenced on 1 September 2005 is credited with prior Defence Force service from 1 April 1979. There has been no break in service.

<u>Accrual</u>	<u>Full Pay</u>	<u>Half Pay</u>
to 1.4.2005 (27 accruals)	270 days	270 days
Less 26 years assumed usage of 1 week full pay personal carer's leave per annum	130 days	NIL
Less a further completed 3 month period – assumed usage 1.25 days	1.25 days	
Balance	138.75 days	270 days
Or	<u>Personal Carer's</u>	<u>Full Pay</u>
Total credit	13 days	270 days
	128.75 days	270 days

#### Next Accrual due 1.4.2006

This accrual process is not contained in agency collective agreements and generally speaking the provision for personal leave involves an annual credit dependent on their anniversary date or a fixed point in time date.

## RECOGNITION FOR LSL

All full and part-time prior service with eligible employers may be recognised for LSL purposes. The maximum break in service allowed by the LSL Act between periods of eligible service is 12 months.

### Establishing a LSL Credit

All recognised periods of eligible service are to be treated as if all service was with the gaining agency. Periods of eligible service are aggregated in order to determine the LSL entitlement. Any LSL taken with previous employers is then deducted from the entitlement calculated. Employees who have received a payment in lieu of LSL on cessation from a previous employer are treated as though the corresponding period of LSL was actually taken as leave.

Leave without pay not to count as service (LWOP NTCAS) defers the LSL accrual date. As a guide the accrual date is only deferred once the period/s of LWOP total more than 30 days per calendar year. However this is only a guide and is not provided for in the LSL Act.

As there is no legislative basis for the LWOP NTCAS deferral, agencies may determine the deferral through an agency CA, e.g. some agreements state that every day of LWOP NTCAS will defer all other leave accruals. It is important to check the provisions in your agency CA.

All unauthorised absences (e.g. strikes) defer the LSL accrual date.

### Example 3

Jenny McCarthy has had the following periods of service:

South Australian Egg Board	17.6.85 - 15.7.87
Agricultural College Qld (@ 30 hpw)	16.11.87 - 30.6.88
Australian Public Service	3.4.89 - Continuing

*What service is acceptable for long service leave purposes, and when will her long service leave accrue?*

- All her prior service is acceptable for long service leave purposes.
- Breaks in service: 123 days + 276 days = 399 calendar days.  
 Notional start date: 17.6.85 + 399 days = **21.7.86**  
 LSL first accrual date: 21.7.86 + 10 years = **21.7.96**

**Exercise 2**

Connie James has the following periods of service:

Australian National Audit Office	23 March 1983 - 27 July 1991 (LWOP 2.4.91 - 27.7.91)
Department Primary Industries & Energy	24 February 1992 - 5 June 1992
Appointed to your agency	8 June 1992 - continuing

Ms James would like to take LSL in September 2006. When would her LSL credit accrue, and how much leave will she have on 1 September 2006?

23/03/83 = 328 days

New start date, 14/02/1994

LSL accrual = 14/02/1994

	=	90	1995	90
Year of Service		9	96	90
Year x 0.5 =		9	97	90
6.6 months		9	98	90
		9	99	189 days
		9	00	6 months 18 days
		9	01	
		9	02	117 days

Service 23/03/83 to 27/07/91 - LWOP: 02/04/91 to 27/07/91

LSL : 23/03/83 to 23/02/92 - 211 days

Service : 24/02/92 to 5/06/92

LSL : 06/06/92 to 07/06/92 - 2 days

Service : 08/06/92 to 01/09/06



**Exercise 3**

Mr Barry Howard commenced permanent employment with your agency on 5 July 1995. Mr Howard has claimed prior service with the Taronga Zoo from 11 September 1993 to 4 June 1995.

The Taronga Zoo has verified Mr Howard's service and has supplied the following details:

- Service was as a full-time employee
- Sick leave taken: 6 days full pay, nil half pay
- Nil long service leave taken or paid in lieu

Calculate Mr Howard's personal carer's leave and LSL credits on his accrual date in 2006.

$11/09/1993$  to  $04/06/1995$   
 LSL -  $11/10/1993$  to  $10/06/95$   
 $=$  LSL  $= 11/10/2003$   
 $15 \text{ years service} \times 0.3 = 4.5 \text{ months}$   
 $8 \text{ months} = 21 \text{ days}$

Personal 18 years  
 $= 360 \text{ days} - 6 \text{ days used}$   
 $= 354 \text{ days}$

Service  $11/09/1993$  to  $04/06/1995$   
 Nil  
 $09/06/1995$  to  $05/07/95$  - 30 days  
 $05/07/95$  to

**Exercise 4**

Ms Hannah Sterling was engaged as an ongoing employee with your agency on 10 January 2002.

The delegate has accepted prior service with the NSW Department of Health from 17 November 1988 to 23 November 2001.

Advice from the NSW Department of Health is that:

- Service was as a full-time employee.
- Ms Sterling took LWOP not to count as service from Monday 8.2.93 to Friday 26.3.93.
- Personal carer's leave taken: 7 weeks full pay, 4 days half pay.
- Nil long service leave taken or paid in lieu.

Calculate her 2006 personal carer's and LSL accruals and credits.

17/11/1988 + 96 days = 21/02/1989  
 -----  
 21/02/89 + 10 years = 21/02/1999  
 -----  
 17 years = 5.1 months  
 -----  
 = 5 months 3 days  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----  
 -----

Service 17/11/88 - 23/11/01  
 LWOP 08/02/93 to 28/03/93 - 49 days )  
 RIS : 24/11/01 to 21/02 - 47 days )  
 Service 10/01/02

## RECOGNITION FOR WAR SERVICE SICK LEAVE

The normal credit is 9 weeks non-accumulative (allotted only once, on joining the APS); and 3 weeks accumulative leave for each year of service (up to a maximum of 9 weeks accumulative leave). The maximum balance of war service sick leave (WSSL) is therefore 18 weeks.

Employees who join the APS with war service and prior employment in the service receive the following:

- the balance, if any, of the non-accumulative 9 week credit that was unused at their separation from the APS (regardless of the length of break in service), **AND** ...
- ...if the separation from the APS occurred before 1 November 1962, the 3 weeks annual accumulative credit on appointment and on each subsequent anniversary of appointment (subject to the 9 weeks maximum balance).
- ...if the separation from the APS occurred after 30 October 1962, upon rejoining they retain the balance of the accumulative WSSL credit held at the time of separation, regardless of the length of the break in service. They do not, however, receive an initial 3 week credit until they reach the recalculated WSSL accrual date. This new accrual date for War Service Sick Leave purposes is calculated by aggregating the total period of service since 1 November 1962. The date on which that period of service next equals a complete number of years is the new War Service Sick Leave accrual date.

## UNRECORDED PRIOR SERVICE

Applications for recognition of service which occurred when records were not kept, or for periods for which records have since been lost or destroyed, should be substantiated as fully as possible by other means.

Agencies need only be satisfied with the evidence they have to accept prior service. So agencies may adopt a "case by case" approach. However, traditionally the following procedures have been applied before claims for recognition of unrecorded prior service have been accepted:

- Three (3) statutory declarations should be submitted:
  - 1 completed by the applicant
  - 2 completed by persons who were associated with the applicant's work during the period in question.
- The statement of each should cover the following points:
  - details of the applicant's individual periods of employment (month to month, or more precisely if possible)
  - the nature and location of the employment
  - the persons under whose supervision the applicant worked
  - the agency association between the applicant and the supporting declarant, for the period in question
  - the weekly hours worked (if the service was part-time)
  - any other relevant information
- Any other evidence that can help to verify the period of employment, such as Group Certificates, payment summaries, etc.

If a period of unrecorded service has been approved but exact dates are not known, the "to" and "from" dates should be deemed to be the 15th of the relevant month.

If there is insufficient evidence to support a claim for recognition of prior service, the agency may reject it.

## **OTHER PRIOR SERVICE ARRANGEMENTS**

### **Resignation due to the Marriage Bar**

#### **Personal / Carer's Leave**

Before November 1966, female permanent employees of the APS were deemed to have resigned when they married. Women who have since rejoined the APS and were affected by this "marriage bar" may have their service recognised for personal carer's leave purposes without application of the 2 month continuity rule. The employee's personal carer's leave credits at the time of resignation are added to the current credits, without affecting the accrual date.

As this condition was granted through PS Det 1998/5 (Clause 4.59) it may not apply to an agency. Check the agency CA or policies for applicable provisions.

#### **Long Service Leave**

The previous service only counts for LSL if the break between eligible employment is less than one year. Be aware that payment of a "marriage allowance" (paid on resignation due to the marriage bar where the service was more than 5 years) is considered payment in lieu of LSL (The Guide, Leave, Appendix 4, Section 2.3).

#### **Redundancy**

Under APS Award Clause 23.4.5, this service is included if it has not previously been recognised for redundancy pay purposes.

### **Service in Papua New Guinea**

Special provisions for recognition of prior service applied to staff employed by the Public Service or an authority of the Territory of Papua New Guinea before and after Independence on 16 September 1975.

- For personal carer's leave refer to The Guide, Part 2, Section 1, Personal carer's leave (10.15).
- For LSL refer to The Guide, Part 2, Section 1, Appendix 4, (3.1).

### **Transfer of Function to the APS**

Special provisions allow certain employees, who were appointed under legislation that provided for transfer of their function to the Australian Public Service, to preserve their leave rights.

### Personal carer's leave

- Employees for whom the provisions apply are described in The Guide, Part 2, Section 1, Personal carer's leave (10.11) (historical information).

### Long Service Leave

Special provisions enable certain employees transferred from the States to the APS to retain State scheme entitlements either

- as they currently exist
- as they existed at the time of transfer

In these cases, the employees have an entitlement to the provisions of the State Scheme or the LSL Act, whichever provides the greater benefit.

Employees for whom special arrangements apply are described in Part 2 of the Guide, Section 1, Appendix 4 (historical information).

### ACT Public Service

Since the ACT Public Service (ACTPS) was established as a separate entity from the APS on 1 July 1994, the ongoing and transitional arrangements then made have generally lapsed. If a transfer from ACTPS to APS occurred before 1.7.94, the ACTPS service is treated as APS service. The transitional arrangements from 1.7.94 are discussed in the *Advanced Prior Service* course.

Details of the arrangements which apply from 5 December 1999 are in PSMPC Advice No 17, paragraphs 11 –17. The *Public Employment (Consequential and Transitional) Amendment Act 1999 (PECTA)* repealed various provisions of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994 (ACTGS Act)* and removed the reciprocal mobility provisions with the ACTPS from Commonwealth legislation (including the Parliamentary Departments) from 5 December 1999.

#### ***Summary of how leave is treated where an employee moves from the ACTPS to APS:***

#### **Long Service Leave**

Prior service with the ACTPS is treated for LSL purposes as if it had been service with the Commonwealth. The authority is s.11 of the LSL Act.

#### **Annual Leave**

Where an ACTPS employee is engaged by an APS agency, annual leave and pro rata entitlements are carried over to the APS and calculated according to the conditions of the gaining agency:

- there is no option for payment in lieu for annual leave credits; the agency meets the costs of credits that are carried over (the authority is the ACTGS Act)

Note: this Act cannot be overridden by agency CAs or AWAs.

As the APS does not generally pay a loading on annual leave, any accrued **annual leave loading** will need to be paid out by the ACTPS before the employee moves to the APS.

### **Personal Carer's Leave**

Under the "Policy Parameters for Agreement Making in the APS", agencies are required to include in their arrangements, provisions for recognising service with the ACTPS as service for personal carer's leave purposes.

### **Maternity Leave**

For the qualifying period for paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973*, it may be possible, within the scope of section 6(4A) of that Act, to recognise the prior service of a Commonwealth employee with the ACTPS. Agencies may wish to seek their own legal advice in any particular case.

## CONTINUITY OF SERVICE

### Reappointment after Invalidity Retirement

Employees who retire because of invalidity and are subsequently declared fit to resume duty (under s.75 of the *Superannuation Act 1976*) are credited on reappointment with:

- any personal carer's leave credits remaining at the time of retirement, even if the break was more than 2 months
- any LSL entitlements if they recommence within 12 months of the certification of fitness (s.12(7) of the LSL Act).

### Vocational Training after Defence Force Service

Certain full-time vocational training schemes associated with defence service such as the Commonwealth Reconstruction Training Scheme, the Korea/Malaya Training Scheme and the National Service Vocational Training Scheme, which include training in learning institutions and subsidised employment in private enterprise do not count as service, but do not break continuity. However, subsidised employment with an "approved employer" does count for service purposes.



## ADDITIONAL QUESTIONS

### Question 1

What break in service will generally break continuity for:

(i) long service leave purposes? .....

.....

(ii) personal carer's (sick) leave purposes? .....

.....

### Question 2

What types of service may be recognised for:

(i) long service leave purposes? .....

.....

(ii) personal carer's leave purposes? .....

.....

### Question 3

Describe how "assumed usage" is invoked when calculating personal carer's leave credits for employees with no personal carer's leave records.

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### Question 4

What is the process for determining prior service details if the records of an employee's former employment are lost or destroyed?

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.....

.....

**Question 5**

Phillip Michaels was appointed your agency on 3 August 1988. He applies to have his prior service recognised for personal carer's leave and long service leave purposes. He would like to take long service leave in November 2006. He gives a brief outline of his employment history:

Commenced	Ceased	Employer
05.06.62	21.06.67	R.A.N.
August 1967	July 1968 (30 hrs/wk)	Australian Apple & Pear Corp
September 1968	08.07.88	State Electricity Commission
03.08.88	Continuing	Your agency

After writing to the previous employers, the following information is obtained:

RAN - Period of employment: 05.06.62–21.06.67. No records kept of personal carer's leave taken. No long service leave taken or paid in lieu. Paid by way of salary.

Australian Apple and Pear Commission - Period of employment: 12.08.67-18.07.68, no personal carer's leave taken, no LWOP and no long service leave taken or paid in lieu. They confirm hours of duty as 30 hours per week. Mr Michaels was paid by way of salary.

State Electricity Commission of NSW - Period of employment: 06.09.68–08.07.88, no part-time service - paid by salary

Leave taken    LWOP NTCAS 5 April 1971 to 2 July 1971  
                   12 days 3 hours 50 minutes personal carer's leave on full pay  
                   4 days personal carer's leave on half pay  
                   5.95 months long service leave paid in lieu

Since joining the APS, Mr Michaels has used 3 weeks 4 days personal carer's leave full pay, and has taken no LWOP.

*What prior service could be recognised for:*

(i)    *personal carer's leave?* .....

.....  
 .....

(ii)    *long service leave?* .....

.....  
 .....

(iii) When would his next personal carer's leave accrual be, and what personal carer's leave credit does he have?

.....  
.....  
.....  
.....  
.....  
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.....  
.....

(iv) Work out his long service leave accrual date and credit.

.....  
05/06/68 = 216 days  
07/01/1973 = 21/06  
43 ~~21~~ years  
.....  
.....  
.....

Service: 05/06/67 to 21/06/67  
KLS: 22/06/1967 to 11/08/1967 - 51 days  
Service: 12/08/1967 to 18/07/1968  
BIS: 19/07/1968 to 05/07/1968 - 49 days  
Service: 06/09/1968 to 08/07/1968  
BIS: 09/07/1968 to 02/08/1968 - 25 days  
Service: 03/08/1968 to  
LWOP: 02/07/70 to 02/07/71 = 1 (day)

## SAMPLE PRIOR SERVICE REQUESTS/LETTERS

<NAME OF ORGANISATION>  
<ADDRESS>

### RECOGNITION OF PRIOR SERVICE

Name <NAME>  
Date of Birth <DATE OF BIRTH>

<NAME>, an employee of this agency, has advised that he/she was employed by your organisation from <DATE> to <DATE> and has asked that this service be recognised for prior service purposes.

Would you please complete the attached statement of service and return it to me. Should you have any queries contact <CONTACT OFFICER> on <TELEPHONE>

<SIGNATURE BLOCK>

<DATE>

Employer's Name and Address:

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**STATEMENT OF SERVICE: LONG SERVICE AND PERSONAL/CARER'S (SICK) LEAVE PURPOSES**

Employee's Full Name:

Date of Birth:

AGS/Service Number(s) during employment:

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If employed as a temporary employee after 1.7.90 please advise the name of the approved fund(s) to which his/her Employer Productivity Superannuation Contributions were paid (where applicable):

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Dates and periods of special leave granted since last personal/carer's (sick) leave accrual or, where employed for less than a total of a year, since date of commencement of employment.

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**FULL-TIME SERVICE**

1. Date(s) commenced continuous full-time service:

\_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_

2. Date(s) ceased full-time service:

\_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_

3. Reason for ceasing employment:

\_\_\_\_\_

4. Remuneration was by way of (cross out whichever is not applicable)

- a) salary/wages, or
- b) fees, allowances or commission only

5. Total period of leave without pay not counting as service during full-time service in respect of:

- a) personal carer's leave purposes:    \_\_\_years\_\_\_months\_\_\_days
- b) long service leave purposes:    \_\_\_years\_\_\_months\_\_\_days

6. Total period of personal carer's leave granted during full-time service:

- a) on full pay:    \_\_\_days\_\_\_hours\_\_\_minutes
- b) on half pay:    \_\_\_days\_\_\_hours\_\_\_minutes
- c) paid in lieu:    \_\_\_days\_\_\_hours\_\_\_minutes

*Please attach copy of the relevant leave & salary records if available*

7. Total period of long service leave granted or paid in lieu (and/or marriage allowance) in respect of full-time service (including gratuity payments based on length of service made by the Commonwealth Banking Corporation and the Reserve Bank). *Please specify if the amount(s) include those granted/paid by other organisations.*

\_\_\_\_\_ months      \_\_\_\_\_ days  
 \_\_\_\_\_ months      \_\_\_\_\_ days

**PART-TIME SERVICE**

1. Date(s) commenced continuous part-time service:

\_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_

2. Date(s) ceased part-time service:

\_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_      \_\_\_/\_\_\_/\_\_\_

3. Hours worked per week during part-time service:

\_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ : \_\_\_\_\_ hours per week  
\_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ : \_\_\_\_\_ hours per week  
\_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ : \_\_\_\_\_ hours per week  
\_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_ : \_\_\_\_\_ hours per week

OR

Average hours per week during part-time service: \_\_\_\_\_

4. Remuneration was by way of (cross out whichever is not applicable)

- a) salary/wages, or
- b) fees, allowances or commission only

5.

*The following information sought in Q5 relating to personal/carer's (sick) leave entitlement is required where the prior service:*

*(a) involves temporary (non-ongoing) part-time employment which is eligible for personal carer's leave and satisfied the continuity requirements of sub-clause 28.6.1.g of the APS Award, ie:*

- in a period of 14 months there is employment under the PS Act for not less that 12 months; and*
- any breaks in employment have been due to the requirements of the APS.*

AND

*(b) is part-time service with an approved employer from 1 March 1990 which was for at least 24 hours per week on at least 4 days per week.*

OR

*(c) is part-time service with an approved employer during the period 1 March 1990 to 14 July 1991 inclusive which was not at least 24 hours per week on at least 4 days per week.*

(a) Total period of leave without pay not counting as service for personal/carer's (sick) leave purposes during part-time service:

\_\_\_\_ years \_\_\_\_ months \_\_\_\_ days

(b) Total period of leave without pay not counting as service for personal carer's leave purposes during part-time service:

(a) on full pay: \_\_\_\_ days \_\_\_\_ hours \_\_\_\_ minutes

(b) on half pay: \_\_\_\_ days \_\_\_\_ hours \_\_\_\_ minutes

(c) paid in lieu: \_\_\_\_ days \_\_\_\_ hours \_\_\_\_ minutes

*Please attach copy of the relevant leave & salary history records if available*

6. Total period of leave without pay not counting as service for long service leave purposes during part-time service:

\_\_\_\_ years \_\_\_\_ months \_\_\_\_ days

7. Total period of long service leave granted or paid in lieu (and/or marriage allowance) in respect of full-time service (including gratuity payments based on length of service made by the Commonwealth Banking Corporation and the Reserve Bank). *Please specify if the amount(s) include those granted/paid by other organisations.*

\_\_\_\_\_ months \_\_\_\_\_ days  
\_\_\_\_\_ months \_\_\_\_\_ days  
\_\_\_\_\_ months \_\_\_\_\_ days

**NON-ONGOING (TEMPORARY) EMPLOYMENT**

1. Dates of non-ongoing employment

\_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_

2. Reason for ceasing non-ongoing employment:

\_\_\_\_\_  
The above details are certified correct.

Name

Position

Phone number

Signature:

Date: \_\_\_/\_\_\_/\_\_\_



<EMPLOYEE NAME>

**RECOGNITION OF PRIOR SERVICE FOR LONG SERVICE AND PERSONAL CARER'S LEAVE PURPOSES**

I am pleased to advise that your prior service with <NAME OF ORGANISATION> for the period <DATE> to <DATE> has been recognised as service for long service leave and personal carer's (sick) leave purposes.

The effect of the recognition of this service is to bring your accrual dates forward. Your long service leave accrual date is <DATE> and you will receive credits for personal carer's leave on <DATE> each year.

Please note that these accrual dates will be affected by any periods of leave without pay, taken subsequently, which are not to count as service.

If you have any enquiries regarding this matter please contact <CONTACT OFFICER> on <TELEPHONE>.

<SIGNATURE BLOCK>

<DATE>

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## Basic Prior Service Answers

The personal carer's leave balances below are recorded in days for ease of explanation. In practice these balances might be maintained in hours and minutes.

### Exercise 2

Ms James would like to take LSL in September 2006. When would her LSL credit accrue, and how much leave will she have on 1 September 2006?

Connie James has had the following periods of service:

Australian National Audit Office	23 March 1983-27 July 1991 (LWOP 2.4.91-27.7.91)
Department Primary Industries & Energy	24 February 1992-5 June 1992
Appointed to your agency	8 June 1992-continuing

- Calculation:

Actual Commencement Date	= 23.03.83
Break in service: 28.07.91-23.02.92	= 211 calendar days
LWOP: 02.04.91-27.07.91	= 117 days
Notional start date: 23.03.83 + 211 + 117 days	= <b>14.02.84</b>
LSL first accrual date: 14.02.84 + 10 years	= <b>14.02.94</b>

### LSL Credit as at 1 September 2006

Service 14.02.84 to 31.08.06 = 22 completed years

22 years x 0.3 months/year = 6.6 months long service leave

### Exercise 3

Calculate Mr Howard's personal carer's leave and LSL credits on his accrual date in 2006.

Mr Barry Howard commenced with your agency on 5 July 1995. Mr Howard has claimed prior service with the Taronga Zoo from 11 September 1993 to 4 June 1995.

The Taronga Zoo has verified Mr Howard's service and has supplied the following details:

- . Service was as a full-time employee
- . Sick leave taken: 6 days full pay, nil half pay
- . Nil long service leave taken or paid in lieu

#### Personal carer's leave

- the commencement date is 11 September 1993
- the break in service (from 05.06.95 to 04.07.95) defers the accrual date by 30 days
- the notional commencement date is 11 October 1993

<u>Accrual</u>	<u>Personal Carer's</u>	<u>Full Pay</u>	<u>Half Pay</u>
to 10.10.06	(13 years plus accrual on commencement)	140 days	140 days
<b>Less</b>	(usage)	6 days	
Balance		134 days	140 days
<b>Or</b>			
Total credit	13 days	124 days	140 days

#### Long Service Leave

- the actual start date is 11 September 1993
- the break in service (from 05.06.93 to 04.07.93) defers the accrual date by 30 days to 11.10.93
- the LSL first accrual date is 11 October 2003
- his LSL accrual in 2006 is  $13 \times 0.3 = 3.9$  months

**Exercise 4**

Ms Hannah Sterling was engaged as an ongoing employee in your agency on 10 January 2002.

**Calculate her 2006 personal carer's and long service leave accruals and credits.**

The delegate has accepted prior service with the NSW Department of Health from 17 November 1988 to 23 November 2001.

You have been advised that;

- . Service was as full-time salaried employee
- . Ms Sterling took LWOP not to count as service from 08.02.93–26.03.93 (effectively 28.03.93, as the weekend is included for LWOP).
- . Personal carer's leave taken: 35 days full pay, 4 days half pay
- . Nil Long Service Leave taken or paid in lieu.

**Personal Carer's Leave**

- the break in service (24.11.01–09.01.02) defers the personal carer's leave accrual date by the full period (i.e. 47 calendar days).
- leave without pay (08.02.93–28.03.93) causes the personal carer's leave accrual date to be deferred by each calendar day (i.e. 49 days).
- the original start date was 17 November.
- the new accrual date is 17 November + 96 days = 21 February.
- 21.02.89 to 21.02.06 is 17 years service (18 accruals).

<u>Accrual</u>	<u>Personal Carer's</u>	<u>Full Pay</u>	<u>Half Pay</u>
to 21.02.06		180 days	180 days
<b>Less</b>		35 days	4 days
Balance		145 days	176 days
<b>Or</b>			
Total credit	13 days	135 days	176 days

**Long Service Leave:**

- the original commencement date was 17 November 1988.
- the break in service (from 24.11.01–09.01.02) defers the accrual date by 47 calendar days.
- the leave without pay (from 08.02.93–26.03.93 (28.03.93 including the last weekend)) defers the accrual date by 49 calendar days.
- the notional commencement date is 21 February 1989
- the LSL first accrual date is 21.02.99
- her credit at 21.02.06 is 17 years x 0.3 = 5.1 months.
- **Next accrual date is 21 February 2007**

## Answers to Additional Questions

**Answer 1:** (i) more than 12 months  
(ii) more than 2 months

**Answer 2:** (i) Any previous full-time and/or part-time service with an approved employer  
(ii) Any previous full-time service with an approved employer.  
Part time service which is at least 24 hours per week on at least 4 days per week occurring after 15.07.91 with an approved employer.  
Any part time service (including service at less than 24hr/wk) from 01.03.90 to 15.07.90.  
Non-ongoing employees - service is deemed to be continuous where in a 14 month period they work at least 12 months.

**Answer 3:** For each complete 3 month period of prior service, the credit is reduced by 1.25 days personal carer's leave at full pay.

**Answer 4:** Obtain three statutory declarations - 1 from the applicant and 2 from persons associated both with the agency and with the applicant for the period in question; and any other documentation which might support the application.

**Answer 5:**

- (i) 6 September 1968 to 8 July 1988 only (SEC). The service with the Apple & Pear Corp is ineligible: part-time service before 1.3.90 does not count for S/L purposes. Therefore the break in service following RAN exceeds 2 months and renders that service ineligible also.
- (ii) All of it, as no break exceeds 12 months. Part-time service, as with the Apple & Pear Corp in this case, can always be recognised for LSL purposes (subject to continuity).
- (iii) Original commencement date (SEC) = 06.9.68  
Break in service SEC and APS - (09.07.88-02.08.88) = 25 calendar days  
LWOP taken - (05.04.71-02.07.71 ie. to 04.07.71 with weekend) = 91 days  
Notional commencement date - 06.09.68 + 25 days+ 91 days = 31.12.68

<u>Accrual</u>	<u>Personal/Carer's</u>	<u>Full Pay</u>	<u>Half Pay</u>
31.12.05	(38 accruals)	380 days	380 days
Less	(SEC)	12 days 3 hrs 50 mins	4 days
	(APS)	19 days	
Balance		348 days 3 hrs 31 mins	376 days
<b>OR</b>			
Total credit	13 days	338 days 3 hrs 31 mins	376 days

**Next accrual due – 31 December 2006**

**Answer 5 (cont):**

(iv) Work out his long service leave accrual and credit

<u>Agency</u>	<u>Dates</u>	<u>Break in Service</u>	<u>LWOP</u>
RAN	05.06.62 – 21.06.67	51 calendar days	Nil
AAPC	12.08.67 – 18.07.68*	49 calendar days	Nil
SEC	06.09.68 – 08.07.88	<u>25 calendar days</u>	<u>91 calendar days</u>
<b>Total deferral</b>		125 calendar days +	91 calendar days

Long Service notional start date: 05.06.62 + 216 days = 07.01.63

LSL first accrual date – 07.01.73

LSL latest accrual date – 07.01.06

Total service: 07.01.63–06.01.06 = 43 years

Part time service - \* 11 months (rounded)

Full time service = 43 years less 11 mths = 42 years 1 mth

Long Service Leave entitlement -

Part-time credit - 11 months or 0.9167 years x 0.3 = 0.275 months (8.25 days)

Full-time credit - 42 years 1 month or 42.0833 years x 0.3 = 12.625 months  
 Less Long Service Leave paid in lieu - 5.950 months  
 = 6.675 months  
 (6 months 20.25 days)

Total entitlement for LSL: 6 months 28.5 days

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D