



Recognition of prior service

Background

1. An employee's prior service with government organisations may be recognised for the purposes of annual leave, personal leave, long service leave and severance payments.

Previous employment under the MOP(S) Act

2. Clauses 52.1 and 52.2 of the Enterprise Agreement provide for prior service under the MOP(S) Act to be recognised as continuous for certain purposes in certain circumstances.
3. Under clause 52.1, where an employee ceases to be employed under the MOP(S) Act, other than through resignation, and returns to MOP(S) Act employment within 6 months, they may choose to repay within 60 days:
 - a. An amount paid to the employee in lieu of annual leave and as severance benefits, including additional severance benefits.
 - b. An amount paid to the employee in lieu of annual leave. The employee will have their prior service recognised for leave purposes and their previous annual leave balance will be re-established.
 - c. An amount paid to the employee as severance benefits, including additional severance benefits. The employee will have their prior service recognised for a future severance benefit (if any).
4. Any repayment under clauses 52.1 or 52.2 will mean that the prior service is recognised for retention payment and salary increment purposes.
5. If an employee chooses not to repay any amount, their prior service will not be recognised for annual leave, severance, salary increment or retention payment purposes. The prior service may be eligible to be recognised for personal leave or long service leave purposes.
6. While prior service may be recognised as service for long service leave purposes, an amount paid in lieu of long service leave is not able to be repaid in order to re establish a long service leave credit.

Transfer of leave from a recognised Commonwealth entities

7. Clause 53 of the Enterprise Agreement provides for accrued leave to be recognised for employees on leave without pay from non-corporate Commonwealth entities as defined in section 11 of the *Public Governance, Performance and Accountability Act 2013* which includes Departments of State and Parliamentary Departments, to undertake MOP(S) Act employment.
8. Where an employee is on leave without pay from a recognised entity to undertake MOP(S) Act employment and resigns from that entity prior to the cessation of their MOP(S) Act employment, the employee will receive a payment for unused annual leave and long service leave, if eligible, when their MOP(S) Act employment ends.

Recognition of prior service in the Commonwealth, state, territory or local government organisation for the purpose of long service and personal leave

9. Periods of employment of the following nature may be recognised as prior service for the purposes of the accrual of long service leave, in accordance with the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act), and for the accrual of personal leave:
 - a. employment in an Australian Government Department or Authority;
 - b. employment in a State Government Department or Authority – includes local government bodies such as a shire, council or municipality;
 - c. employment in a Commonwealth Territory Public Service or Authority (including Papua New Guinea before independence);
 - d. membership of the Australian Defence Forces – including paid service with the Citizen Military Forces, the Defence Force Reserve and National Service;
 - e. holding an office, or employment under the *Reserve Bank Act 1959*;
 - f. employment as a locally engaged employee overseas, appointed after 1976; and
 - g. employment in other organisations prescribed under sections 7 or 11 of the LSL Act.
10. Service is considered eligible for personal leave accrual purposes where breaks in eligible service do not exceed two months; for long service leave purposes, a break must not exceed 12 months.
11. Employment may have been either full-time or part-time.
12. The following types of employment are either excluded by the LSL Act or have not been recognised or prescribed for the purposes of that Act, and will not be recognised as prior service for the purposes of clause 52.3 of the Enterprise Agreement:
 - a. service in an honorary capacity;
 - b. service remunerated by way of fees, allowances or commission only;
 - c. with organisations controlled by charitable, benevolent or religious associations (i.e. hospitals run by such associations);

- d. with companies that have not been prescribed under the *Long Service Leave (Commonwealth Employees) Regulations 2016* (e.g. NBN Co Limited);
- e. with companies or bodies that are not wholly owned by the Commonwealth or a state (employment with joint Commonwealth-state bodies is recognised); and
- f. as otherwise provided under the LSL Act.

Recognition of prior state or territory MOP(S) Act equivalent service for the purposes of calculating a severance benefit

Eligibility

13. For the purposes of clause 52.4, a state or territory parliamentarian is a person:
 - a. serving as an elected member of a Legislative Council or Assembly of an Australian state or territory; or
 - b. who is a former Premier or Chief Minister of an Australian state or territory Government.
13. Private employment by a person referred to in paragraph 13 will not be recognised for the purposes of calculating a severance benefit.
14. Periods of leave without pay do not count as service for the purposes of calculating a severance benefit, however, such periods do not break continuity of service.
15. Where an employee has a break in service with parliamentarians in a state or territory, the period of service that occurred prior to the break in service will not be recognised.

Example: An employee who was employed with a NSW parliamentarian, followed by a break in service of one full business day or longer and then re-employed by the same (or another) NSW parliamentarian, will only have the later period of service recognised.

17. Where an employee has been employed by parliamentarians in more than one state or territory, only the period of continuous service recognised for severance purposes by the state or territory that occurred **immediately** prior to employment under the MOP(S) Act will be recognised for the purposes of calculating a severance benefit.

Example: An employee who was employed by a Victorian parliamentarian, followed without a break in service by employment by a Queensland parliamentarian, and again without a break in service by MOP(S) Act employment, will have the service which was recognised for severance purposes for the Queensland parliamentary employment recognised for the purposes of calculating a severance benefit.

If Queensland recognised the service with the Victorian parliamentarian, then the entire period will be recognised under MOP(S) Act employment. If the service with the Victorian parliamentarian was not recognised for severance purposes for the Queensland parliamentary employment, then only the service with the Queensland parliamentarian will be recognised for the purposes of calculating a MOP(S) Act employment severance benefit.

18. MOP(S) Act employment that occurs prior to employment with a state or territory parliamentarian without a break in service between the two, and that is recognised for severance purposes by that state or territory will be recognised for severance purposes where the employee is subsequently employed under the MOP(S) Act without a break in service.

Process

19. Consistent with clause 52.4 of the Enterprise Agreement, an employee seeking to have their prior service with a state or territory parliamentarian recognised must lodge a request ('initial request') with the Department within one month of the commencement of their MOP(S) Act employment (e.g. if employment commences on 15 March, the initial request must be received by the Department no later than 14 April). Where the initial request is received by the Department after this time, the service cannot be recognised.
20. Employees may lodge the initial request with the Department by:
 - a. completing the relevant section of their ongoing or non-ongoing employment agreement; or
 - b. email to mpshelp@finance.gov.au.
21. The initial request must include:
 - a. the name of the employer;
 - b. the state or territory in which the employer is/was a parliamentarian; and
 - c. the period of employment.
22. Following submission of the initial request, employees are required to complete a Prior Service Kit as outlined below.
23. There is no timeframe in which an employee must provide the Department with a completed Prior Service Kit, however, early completion will assist the employee in ensuring that prior employment records are more readily available. The one month lodgement timeframe **only** applies to the initial request.

How to apply for recognition of periods of prior service

- Refer to prior service kit.
24. The prior service kit contains pro forma documentation to assist employees in approaching former employers to obtain details of prior service. An application for recognition of prior service needs to be substantiated as far as possible even where records were not maintained or have been lost. Where sufficient evidence cannot be provided, the Department may reject the application.
 25. Once an employee has obtained all the relevant documentation, they must complete the *request for recognition of prior service* form in the prior service kit. The form and all documentation should then be submitted to the Department.
 26. Where records are not readily available, the Department may ask an employee to provide other evidence, e.g. payment summaries, and three Statutory Declarations in support of the application – one by the employee and two by persons who were associated with the employee for each period of eligible prior service confirming:
 - a. the period(s) of employment (actual dates if possible; identification of relevant months as a minimum);
 - b. the nature and location of the employment (including hours worked if part-time);
 - c. names of persons who supervised the employee;
 - d. the nature of the working relationship between the employee and the supporting declarants;
 - e. details regarding leave without pay, personal/sick leave and long service leave taken by and/or paid in lieu to the employee during the period of service;
 - f. whether paid a loading in lieu of accrual of and access to leave during any part of the service;
 - g. if applicable, whether the employee was paid a severance benefit, or similar payment, in relation to service with a state or territory parliamentarian; and
 - h. any other information the employee considers to be relevant.
 27. Please note that applications for recognition of prior service may take some time to complete. If there is a particular urgency relating to your application, e.g. for an application to take long service leave in the near future, please contact the Staff Help Desk to discuss the circumstances.

Annual leave

28. Other than as provided under clauses 52 and 53 of the Enterprise Agreement, periods of employment prior to the current continuous period of MOP(S) Act employment do not count for the purposes of accrual of annual leave because the employee would have received payment in lieu at the termination of any such employment.

Personal leave

29. Periods of eligible prior service as outlined in paragraph 9 above may be recognised for the purposes of accrual of personal leave credits, subject to paragraphs 30 and 31 below.
30. Two or more separate periods of eligible service count as one period where they are broken by periods of not more than two months, noting that the breaks do not count as service.
31. Periods of service where the employee is in receipt of a loading in lieu of personal leave do not count as service for personal leave accrual purposes, however, such periods do not break continuity of service.

Long service leave – subject to the LSL Act

32. Periods of eligible prior service as outlined in paragraph 8 may be recognised for the purposes of accrual of long service leave credits, subject to the paragraphs below.
33. Two or more separate periods of eligible service count as one period where they are broken by periods of not more than 12 months, noting that the breaks do not count as service.
34. Long service leave credits are not carried across from recognised organisations. Instead, each period of prior service that is recognised is treated as if it was Commonwealth service and the long service leave credit is calculated on this basis.
35. Separate provisions apply for prior service in the categories below. Employees who have prior service in these circumstances should discuss the calculation of their long service leave credits with the Department:
 - a. certain states following the transfer of functions to the Commonwealth, and with Papua New Guinea;
 - b. effect of the *Qantas Sale Act 1992*; and
 - c. reciprocal mobility arrangements between the Australian Public Service and the ACT Public Service.
36. Where an employee has taken long service leave during a period of recognised prior service, or has received payment in lieu of that leave, the credit falling due under the provisions of the LSL Act is adjusted accordingly.
37. The LSL Act does not allow for buy back arrangements where an employee with recognised prior service has taken long service leave or received payment in lieu.
38. 'Long leave' for service in Papua New Guinea is not in the nature of long service leave, so where an employee has taken 'long leave' or received a payment in lieu, it is not taken into account in adjusting credits.

39. 'Marriage allowance' paid to female employees who resigned on marriage prior to 1966 is considered payment in lieu of long service leave and is taken into account in adjusting credits.
40. Where 'gratuity' payments based on length of service have been made to an employee by the Reserve Bank, an adjustment is made to take account of the payment.