



Public Sector Labour Relations

Shaping a contemporary public sector workforce

Long service leave – Transitional and ongoing arrangements for casual employees

19 February 2021

Background

As advised to public sector employing authorities in September 2019, casual public sector employees may be eligible for long service leave (LSL) under the *Long Service Leave Act 1958* (the Act), even if the applicable award or industrial agreement provides a casual loading in lieu of LSL.

Public sector industrial agreements are being renegotiated so casual public sector employees will accrue LSL under the award or agreement applying to them, and not the Act. For each occupational group, accrual will continue under the Act until the applicable replacement industrial agreement is registered.

Statutory and industrial LSL entitlements

The LSL qualifying period and entitlement for each occupational group differ between the Act and revised industrial instruments. The most common arrangements are compared in the following table:

Instrument	Qualifying period	Accrued entitlement	Accrual per annum
Act	10 years	8 ² / ₃ weeks	0.8667 weeks
Revised industrial instrument	7 years	13 weeks	1.86 weeks
	10 years	13 weeks	1.3 weeks

Transitional arrangements

Employers need to consider how best to transition entitlements of existing casual employees from the Act to an industrial instrument. The preferred approach, likely to eliminate claims of underpayments or breaches of the Act, is described below:

- **Accrued LSL entitlements:** Employees retain entitlements already accrued under the Act. Any accrued LSL entitlement is calculated on the average weekly hours worked by the employee over the entire qualifying period.
- **Pro rata LSL entitlements:** Years of continuous service that do not amount to an accrued entitlement under the Act transition directly, and are treated as years of continuous service for the revised industrial instrument without any compaction.
- **Continuous service:** Section 6 of the Act determines what constitutes continuous service for most casual employees both before and after the transition. Some public sector industrial instruments contain different arrangements for specific occupational groups.

Guidance on continuous employment under the Act is available [here](#). Amendments to the Act proposed in the *Industrial Relations Legislation Amendment Bill 2020* (which has now lapsed) are not relevant to calculating continuous service.

Other considerations

Some employers may need to consider alternative arrangements to manage the transition in the context of their workforces and operations, subject to consistency with the employer's legal obligations and stakeholder views. Employers should contact PSLR to discuss proposed alternatives.

As well as transitioning existing LSL entitlements, employers must ensure they are appropriately accounting for ongoing casual employee LSL accruals, and access to accrued leave, following registration of a revised industrial instrument.

Worked examples – transition

The following examples show how transitional LSL entitlements are calculated for casual employees who have completed five, nine and eleven years of continuous service. These examples are based on transition from a ten to a seven year accrual pattern. Some revised industrial instruments will result in different situations.

Example one: Casual employee has completed five years of continuous service on the date of registration of the revised industrial instrument.

1. Before registration:
LSL Act (notional entitlement) calculation = 5 years x 0.8667 weeks = 4.33 weeks.
2. After registration:
Years of continuous service are recognised for the applicable award without any compaction. Calculation = 5 years x 1.86 weeks = 9.3 weeks. A LSL entitlement under the applicable award accrues on completion of seven years' continuous service.
3. The employee works another two years. Calculation = 2 years x 1.86 weeks = 3.7 weeks (rounded down).
4. The employee accrues LSL entitlement at 7 years = 9.3 + 3.7 = 13 weeks.
5. The employee needs to work a further seven years to accrue their next LSL entitlement under the applicable award.

Example two: Casual employee has completed 9 years of continuous service on the date of registration of the revised industrial instrument.

1. Before registration:
LSL Act (notional entitlement) calculation = 9 years x 0.8667 weeks = 7.8 weeks.
2. After registration:
The pro rata entitlement under the LSL Act attributable to seven years' service becomes an accrued entitlement under the applicable award. Calculation = 7 years x 1.86 weeks = 13 weeks (rounded down).
The remaining two years are recognised as years of continuous service for the PSA without any compaction. Calculation = 2 years x 1.86 weeks = 3.7 weeks (rounded down).
3. The employee works another five years. Calculation = 5 years x 1.86 weeks = 9.3 weeks.
4. The employee accrues second LSL entitlement at 14 years = 3.7 + 9.3 = 13 weeks.
5. The employee needs to work another seven years to accrue their next LSL entitlement under the applicable award.

Example three: Casual employee has completed 11 years of continuous service on the date of registration of the revised industrial instrument

1. Before registration:

LSL Act (accrued entitlement) calculation = 10 years x 0.8667 weeks = 8.667 weeks.

LSL Act (notional entitlement) calculation = 1 year x 0.8667 weeks = 0.8667 weeks.

2. After registration:

LSL Act (accrued entitlement) calculation = 10 years x 0.8667 weeks = 8.667 weeks.

Years of continuous service are recognised for the applicable award without any compaction. Calculation = 1 year x 1.86 weeks = 1.86 weeks. A LSL entitlement under the Applicable Award accrues on completion of seven years' continuous service from the employee's last LSL accrual under the LSL Act.

3. The employee works another six years. Calculation = 6 years x 1.86 weeks = 11.16 weeks.

4. The employee accrues second LSL entitlement at 17 years = 1.86 + 11.16 = 13 weeks (rounded down).

5. The employee needs to work another seven years to accrue their next LSL entitlement under the applicable award.

Your PSLR labour relations adviser is available to assist with any issues relating to LSL entitlements for casual employees.
