



**Determination of the Commissioner for
Public Sector Employment**

**DETERMINATION 3.4C:
Employment Conditions –
Long Service Leave**

Public Sector Act 2009

Date of Issue: 1 July 2011



Government of South Australia

Commissioner for Public Sector Employment

Office for Ethical Standards
& Professional Integrity

DETERMINATION OF THE COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT

3.4C

DETERMINATION 3.4C: EMPLOYMENT CONDITIONS – LONG SERVICE LEAVE

Employment Conditions – LONG SERVICE LEAVE

<i>Public Sector Act 2009</i> Determination and Guidelines	Employment Conditions – Long Service Leave
Date of Operation	1 July 2011
Review Date	1 December 2012

Who is covered by this Determination?

Under Section 16(1) of the *Public Sector Act 2009* (“PS Act”) the Commissioner for Public Sector Employment:

“...may issue determinations relating to

- (a) employment in the Public Service; and*
- (b) public sector employment outside the Public Service that is declared by another Act or the regulations under this Act to be employment to which this section applies.”*

This Determination applies to:

- Employees in the Public Service employed in a public sector agency that is an administrative unit or attached office, as defined by the PS Act; and
- Public sector employees whose employment has been declared by another Act or the regulations under the PS Act to be employment to which section 16(1) of the PS Act applies.

If you are in any doubt as to whether this Determination applies to your employment, please contact your Human Resource Management unit to clarify your status.

This Determination:

- has effect from 1 July 2011; and
- operates in substitution for Attachment C – Long Service Leave, of Commissioner’s Standard 3.4, which ceases effect on 30 June 2011.

Minimum Requirements

Chief executives must ensure compliance with the minimum requirements in this Determination as per the PS Act.

Long Service Leave (LSL) entitlements and provisions for PS Act employees are detailed in Schedule 1 Part 6 and Regulations 23 and 24 of the PS Act.

Note: Regulation 13 operates to apply Schedule 1 Part 6 (Long Service Leave) to specified public sector employees to the extent specified therein.

Delegations

The Commissioner for Public Sector Employment delegates to the chief executives in administrative units the authority under Section 16(2)(b) of the PS Act to determine appropriate long service leave entitlements for PS Act employees. The power conferred by this delegation must be exercised in accordance with the content of this Determination and the provisions of the Remuneration Standard (Standard 3.2).

Chief executives may delegate this authority in writing to other nominated employees within their administrative units (either by name or by reference to the person for the time performing the duties of a nominated position).

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1. Long service leave entitlement

Long service leave entitlements are provided in Part 6 Clauses 7, 8 and 9 of Schedule 1 of the *Public Sector Act 2009* (PS Act) and Regulations 23 and 24.

All long service leave entitlements previously accrued by an employee at the date of implementation of this Determination within their administrative unit will remain unchanged.

For the purposes of long service leave, effective service commences on the date of employment as a PS Act employee. A year of effective service normally ends at the end of the day before the anniversary of this date, except where it has been extended by a period of special leave without pay, which is determined not to count as effective service. Refer to Recognition of Prior Service (Standard 3.4) for information on the impact of prior service on effective service for long service leave purposes.

An employee who has 7 years or more effective service is entitled to the following long service leave:

- 9 calendar days in respect of each completed year of effective service.

Prior to 1 July 2011 the PS Act provided for an employee to accrue long service leave on the basis of 15 calendar days in respect of their 16th and each subsequent year of effective service. However, if an employee commenced employment prior to 1 July 1986, for effective service up to and including 30 June 1986 the long service provisions of the repealed *Public Service Act, 1967-81* is applicable. Refer to Appendix 1 for further information.

Where long service leave has been taken by an employee or a payment in lieu of long service leave has been made to an employee, the employee's entitlement to long service leave is reduced accordingly.

Casual employees

Casual employees are entitled to accrue and take long service leave provided they meet the normal requirements for effective service. Effective service includes service where an employee is not actually working but where there is a continuing relationship between the employee and the employer. Such a relationship does not necessarily need to be in writing.

Note that a period of more than 3 months (other than for parenting purposes) between periods of paid employment during such a relationship is considered to be a break in service, and the service prior to such a break will not be considered as effective service for the purposes of accruing future long service leave. If such a break in service occurs, the employee must receive a payment in lieu of the long service which they may have accrued up until the end of the last period of paid employment before the break in service occurred.

Note that a period of paid employment commences on the first day of employment in the period and ends on the last day of employment of the period – it is not based on when the employee was paid.

Note also that suspension of an agreement with an 'as and when required' casual employee for parenting purposes is not considered a break in service (refer to Parental leave (Standard 3.4)), however the period of suspension is not considered as effective service.

The amount of paid hours during the long service leave and options for payment are as per that of a part time employee.

Public Sector employees with PS Act long service leave provisions

Pursuant to Public Sector Regulation 13, the long service leave provisions of the PS Act also apply to the following Public Sector employees:

- police officers; and
- employees of the South Australian Fire and Emergency Services Commission, South Australian Metropolitan Fire Service, South Australian Country Fire Service or South Australian State Emergency Service; and
- public sector employees covered by the *South Australian Metropolitan Fire Service Enterprise Agreement 2009* (or any enterprise agreement made in substitution for that enterprise agreement); and
- officers of both Houses of Parliament and persons under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or under their joint control (but not including persons appointed to offices under the *Parliament (Joint Services) Act 1985*); and
- persons employed by the Crown in public offices under an Act and who do not have an entitlement to long service leave under that Act or under their conditions of employment (other than a person appointed to judicial office, a person who is remunerated solely by fees, allowances or commission or a person employed by a statutory corporation); and
- an employee of the Land Management Corporation, if immediately before the commencement of the regulations, Part 7 division 3 of the *Public Sector Management Act 1995* applied to the employee.

Regulation 13(1a) also provides that the long service leave provisions of clause 7(1) and (2)(a) of Schedule 1 of the PS Act will also apply, from 1 July 2011, to:

- persons employed pursuant to section 72 of the PS Act and persons employed in the position of Assistant or Research Officer to a Member of Parliament; and
- persons employed by WorkCover pursuant to Part 5 of the *WorkCover Corporation Act 1994*.

Employees in the public health sector (apart from public servants employed in the “head office” of the Department of Health) derive their entitlements to long service leave under clause 2 of Schedule 3 to the *Health Care Regulations 2008*. Clause 2 continues the operation of a proclamation made under section 59 of the repealed *South Australian Health Commission Act 1976*. That proclamation extended public service long service leave entitlements to employees in the public health sector.

A proclamation made pursuant to section 64(2) and (3) of the *Statutes Amendment (Budget 2010) Act 2010* specified that clause 26.1.3 of the *SA Health Visiting Medical Specialists Enterprise Agreement 2009* and clause 12 of the *SA Ambulance Service Enterprise Agreement 2007*, which relate to long service leave, no longer apply from 1 July 2011 and that from 1 July 2011, the accrual of long service leave will occur in accordance with clause 7(1) and (2)(a) of Schedule 1 of the PS Act.

In order to determine whether the provisions apply to other employees of the Crown, reference will need to be made to the legislation covering conditions of employment in each case.

2. Applying for and taking long service leave

Long service leave may only be granted to an employee on application made to the chief executive in a form approved by the chief executive. Employees cannot be directed to apply for and take long service leave. However a chief executive should ensure that there is a planned approach to long service leave, which allows equitable access by employees, and encourages the taking of long service leave.

Minimum period of long service leave

Long service leave arrangements now offer an opportunity for employees to utilise periods of recreation in the traditional way or to strategically use shorter periods to support more flexible working arrangements.

Long service leave may be applied for and taken in calendar days for periods of at least seven days or in working days for periods less than seven days.

Leave of at least seven calendar days

When applying for a period of long service leave **of at least seven calendar days**, the period of long service leave must commence on the first normal working day of absence and continue up to, but not including, the day on which the employee resumes duty, or commences other leave. Every day occurring during a period of long service leave (whether it is a working day or not) is to be regarded as a day of long service leave.

Example: An employee applying for seven calendar days long service leave for the period Monday 7 January to Sunday 13 January, returning to work on Monday 14 January, will need to record Monday 7 January as the first day of absence and Sunday 13 January as the last day of absence on the leave application form.

Leave of less than seven calendar days

Where a request is made for long service leave to be taken for a period of less than seven calendar days, the appropriate conversion from calendar days to working days should be made, viz 1 standard working day is equal to 1.4 calendar days for long service purposes. Where an employee does not work a standard work day, the appropriate conversion from the calendar day equivalent should be made in hours.

When applying for a period of long service leave **less than seven calendar days**, each working day is treated as a **single stand-alone day**.

Example: Assuming a normal Monday to Friday working week – An employee applying for two days long service leave on Friday 11 January and Monday 14 January, returning to work on Tuesday 15 January, will need to record Friday 11 January as a long service day and Monday 14 January as a long service leave day on the leave application form.

Note: In the above example, if the two days are standard working days (of 7.5 hours per day) they are deducted as 1.4 calendar days each (total of 2.8 calendar days) as per the conversion detailed above. If the two days are non-standard working days, the appropriate conversion from the calendar day equivalent should be made in hours (as detailed in the section on “Employees Working Compressed Weeks” of this Determination).

Remuneration during long service leave

During a period of long service leave an employee is entitled to normal remuneration (adjusted as required by this Determination for part time employees) and the following allowances (if applicable):

- Whyalla cost of living allowance;
- locality allowance;

- qualification, proficiency and skill allowance (including first aid allowance);
- additional duties allowance;
- casual loading where applicable.

Payment in advance

An employee who is granted long service leave may be paid the total remuneration which would be payable on paydays during that leave on the payday prior to the leave being taken.

Extended long service leave

An employee may elect to take extended long service leave (also known as long service leave on half pay). In that event the period of leave is to be twice the period to which the employee would otherwise have been entitled.

Applications for extended long service leave must be for an even number of days.

During the first half of the extended leave the employee is legally on long service leave and considered to be paid at full pay. The second half of the leave is to be recorded and treated as special leave without pay, both for the purposes of salary and determination of leave entitlements. For administrative purposes only, if requested by an employee, an administrative unit will make arrangements to spread the payment of salary due in the first half of the leave over the whole period of the extended long service leave.

Payment of leave upon transfer or assignment to a lower remuneration level

This provision only applies when an employee has been transferred to a position at a lower remuneration level as a result of mental or physical incapacity, or being excess to requirements.

The salary payable during long service leave, or payment in lieu of long service leave on termination, related to service prior to the transfer must be equivalent to the salary the employee would be receiving if the employee had remained at the higher remuneration level.

This provision does not apply where an employee has been transferred to a position at a lower remuneration level as a consequence of unsatisfactory performance or disciplinary processes.

Part time employees

Where part time or casual service forms part of an employee's effective service, the employee must determine which of the following options will be used as the basis for payment of salary and allowances during the period of long service leave.

Each option is available to an employee on each occasion the employee applies for long service leave. Administrative units must explain the two methods to employees with part time or casual service and employees must choose one method.

Note that examples of calculations of long service leave for employees with part time or casual service are given in Appendix 2.

Option 1 – Pro rata salary

Employees have the same number of calendar days of long service leave as an employee with no part time or casual service, based on the length of effective service. However, the number of paid working hours available for payment during the period of leave is adjusted on a pro rata basis.

Employees may nominate a number of working hours per week to be paid during the leave up to and including the number normally worked by a full time employee.

Common alternatives include the average hours worked by the employee over their effective service, or current working hours.

Employees nominating this option should note that although they are entitled to the same number of calendar days as full time employees, they only have available a specific number of working hours to be paid during that leave.

Employees may take a number of short periods of leave or nominate a number of working hours that is above the average number of working hours during their effective service. However, at some time paid long service leave entitlements may be exhausted and any further long service leave for an employee will be unpaid until such time as the employee has completed another year of effective service.

Alternatively, if they nominate a number of working hours less than the average hours worked during their effective service then at some time their calendar days of long service leave may be exhausted before their entitlement to paid hours of leave. An employee in this situation will not be able to access these paid hours of leave until such time as the employee has completed another year of effective service or the employee resigns.

Option 2 – Pro rata calendar days

Under this option the number of calendar days of long service leave is calculated on a pro rata basis in accordance with the relationship between hours worked and full time hours over the period of effective service.

Payment for and taking of these calendar days is then on same basis as if the employee was a full time employee during the period of leave.

Employees purchasing leave

Employees taking the additional purchased leave are considered to be taking special leave without pay. Refer to special leave without pay on long service leave for details of the impact on entitlements (Standard 3.4).

Purchased leave may be taken in conjunction with other leave (including long service leave). However, purchased leave is not to be granted immediately after a period of long service leave and immediately prior to a further period of long service leave.

Employees working compressed weeks

A period of long service leave of at least seven calendar days must commence on the first normal working day of absence and continue up to, but not including, the day on which the employee resumes duty, or commences other leave.

Every day occurring during a period of long service leave of at least seven calendar days (whether it is a working day, a nominated day off, or other day which is not a working day) is to be regarded as a day of long service leave.

If an employee working on a compressed weeks arrangement applies for a single day of long service leave where they would usually work a standard day, their single day's leave should be debited as 1.4 calendar days. If the single day of long service leave constitutes a non-standard working day, the appropriate conversion from the calendar day equivalent should be made in hours.

Example: An employee working on a compressed weeks arrangement applying for a single day's long service leave on a non-standard working day of 9 hours will have 1.4 calendar days x 9 hours/7.5 hours = 1.68 calendar days debited.

Employees working flexitime hours

The number of calendar days taken and working hours paid during long service leave must be recorded on the adjustment sheet.

3. Other types of leave during long service leave

A period of long service leave must not be split or interrupted for any reason other than sick leave (refer to Sick Leave (Standard 3.4)), or recreation leave as outlined below.

Recreation leave is not to be granted immediately after a period of long service leave and immediately prior to a further period of long service leave unless:

- the employee would otherwise be unable to take out all recreation leave as required by this Determination; or
- it is required to cover an employee's continued absence after all current long service leave entitlements have been exhausted and pending the accrual of further entitlements.

4. Miscellaneous matters

Programmed days off/public holidays

If a programmed day off or a public holiday falls in a period of long service leave, then the period of long service leave must not be extended by a day nor must another day be substituted for the programmed day off or public holiday.

Resumption of duty during long service leave

In some circumstances an employee (with the approval of the chief executive) may resume duty before the end of the period of approved leave. The unused balance of approved long service leave may be taken at a time mutually agreed between the employee and the chief executive without further approval being required.

If the employee has received payment in advance of leave, then the employee must not be paid again until the original period of the leave has ended. The employee will be paid for the unused long service leave when it is subsequently taken.

Outside employment during long service leave

An employee on leave is still bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, to seek approval for outside employment.

APPENDIX 1 - Long service leave accrued prior to 1 July 1986

The following information summarises an employee's entitlement to long service leave under the repealed *Public Service Act 1967* in relation to accrual of leave on the basis of 15 days per year:

- an increase in long service leave entitlement from 9 calendar days to 15 calendar days is applicable in relation to an employee's 16th or any subsequent year of effective service which commenced on or after 1/7/75.
- if an employee's 16th or subsequent year of effective service commenced prior to but including 1/7/75, an apportionment is required to determine the employee's entitlement for that year of service - refer to table below (in effect this is only required where an employee's date of entry for long service leave purposes commenced on or before 1/7/60).

Leave entitlements for the 1974-75 year are as follows:

Commencement of 16 th or subsequent year of effective service	Number of calendar days leave to be credited for that year
1/7/74 - 31/7/74	9
1/8/74 - 30/9/74	10
1/10/74 - 31/11/74	11
1/12/74 - 29/1/75	12
30/1/75 - 31/3/75	13
1/4/75 - 31/5/75	14
1/6/75 - 30/6/75	15

APPENDIX 2 - Calculation of Long Service Leave Entitlements and Payment for Employees with Part Time Service

Note: Effective from 1 July 2011, the rate of accrual will remain at 9 calendar days for each completed year of effective service (refer: *Statutes Amendment (Budget 2010) Act 2010*).

All the following examples relate to an employee with an effective service date of 12/3/81 and who wishes to take long service leave commencing 23/2/01 (period of seven days from Monday to Sunday).

The employee has completed more than ten years effective service (19 years on 11/3/00). The employee has also completed an additional 11 months of service between 12/3/00 and 11/2/01, but this does not count towards long service leave unless the employee terminates their employment and receives a payment in lieu.

1. Method 1

The employee has the same number of calendar days of long service leave as a full time employee (refer to calculation in example above), that is 195 calendar days.

The number of working hours available to be paid for long service leave accrued for each period of service at a different proportion of time worked is calculated by summing the result of the following formulae for each separate period of service.

$$\frac{\text{No. of months at proportion}}{\text{Total months at same accrual rate}} \times \frac{\text{No. of days accrued over period}}{\text{Calendar days in a week}} = \text{No. of hours worked per week}$$

Which is the sum of:

12/3/81 to 21/5/90 (9 years and 2.3 months @ full time 37.5 hours a week)

$$\frac{110.3}{180} \times \frac{135}{7} \times 37.5 = 443.17$$

22/5/90 to 12/3/96 (5 years and 9.7 months @ part time 22.5 hours a week)

$$\frac{69.7}{180} \times \frac{135}{7} \times 22.5 = 168.03$$

12/3/96 to 5/10/97 (1 year and 6.8 months @ part time 22.5 hours a week)

$$\frac{18.8}{48} \times \frac{60}{7} \times 22.5 = 75.54$$

6/10/97 to 11/3/00 (2 years and 5.2 months @ part time 30.0 hours a week)

$$\frac{29.2}{48} \times \frac{60}{7} \times 30.0 = 156.43$$

Total available paid working hours

$$= 443.17 + 168.03 + 75.54 + 156.43$$

$$= 843.17 \text{ hours}$$

This employee has an entitlement of 843.17 hours to be taken over 195 calendar days.

When an employee takes long service leave for a specified number of calendar days under Method 1:

- the number of calendar days of leave available is reduced by the number of calendar days taken; and
- the number of working hours of paid leave available is reduced by the number of hours paid to the employee during the period of leave based on the number of working hours per week specified by the employee.

If the number of available paid working hours is exhausted before end of the leave then the remaining leave shall be recorded as long service leave, but this leave will be unpaid.

2. Method 2

The number of calendar days long service leave on a full time basis is calculated by summing the number of calendar days accrued for period of service at a different proportion of time worked and/or different accrual rate using the following formulae for each separate period of service.

No. of months at proportion and accrual rate	x	No. of days accrued each year <u>12 (i.e. No. of months in a year)</u>	x	No. of hours worked per week <u>No. of hours worked per week by full time employee</u>
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Which is the sum of:

12/3/81 to 21/5/90 (9 years and 2.3 months @ full time 37.5 hours a week)

$$= 110.3 \quad \times \quad \frac{9}{12} \quad \times \quad \frac{37.5}{37.5}$$

= 82.73 calendar days

22/5/90 to 12/3/96 (5 years and 9.7 months @ part time 22.5 hours a week)

$$= 69.7 \quad \times \quad \frac{9}{12} \quad \times \quad \frac{22.5}{37.5}$$

= 31.37 calendar days

12/3/96 to 5/10/97 (1 year and 6.8 months @ part time 22.5 hours a week)

$$= 18.8 \quad \times \quad \frac{15}{12} \quad \times \quad \frac{22.5}{37.5}$$

=14.1 calendar days

6/10/97 to 11/3/00 (2 years and 5.2 months @ part time 30.0 hours a week)

$$= 29.2 \quad \times \quad \frac{15}{12} \quad \times \quad \frac{30.0}{37.5}$$

= 29.2 calendar days

Total calendar days available as per full time employee for service up to 11/3/00

$$= 82.73 + 31.37 + 14.1 + 29.2 = 157.4 \text{ calendar days.}$$

When taking leave the employee will be paid as per a full time employee for each day of the leave, which would be paid for a full time person taking leave over the same period.

3. Conversion from One Method to Another

An employee with part time service may elect either Method 1 or Method 2 each time long service leave is taken. Where leave has previously been taken under one method and the employee now elects to take further leave under the other method, the following conversions should be used.

4. Conversion - Method 1 to Method 2

When some leave has been taken under Method 1 and an employee with a credit on the basis of Method 1 (i.e. a number of calendar days and a number of paid working hours) wishes to take leave on the basis of Method 2 the following conversion calculation must be used.

Number of calendar days of long service leave available on a full time basis =

$$\frac{\text{No. of paid working hours credit}}{7.5 \text{ (Normal hours worked by full-time employee in a day)}} \times \frac{7 \text{ (No. of calendar days in a week)}}{5 \text{ (No. of working days in a week for full time employee)}}$$

5. Conversion - Method 2 to Method 1

When some leave has been taken under Method 2 and an employee with a credit on the basis of Method 2 (i.e. a number of calendar days on a full time basis) wishes to take leave on the basis of Method 1 the following conversion calculation must be used.

Number of calendar days of long service leave available =

$$\text{No. of calendar days credit which would be available under Method 1 if no leave had been taken} - \text{Calendar days of long service leave taken under either Method 2 or Method 1}$$

Number of paid working hours of long service leave available =

$$\text{Credit in calendar days under Method 2} \times 7.5 \text{ (Normal hours worked by full time employee in a day)} \times \frac{5 \text{ (No. of working days in a week for full time employee)}}{7 \text{ (No. of calendar days in a week)}}$$