



Prior Service Recognition Policy

Policy number: 12/2022

Issue Date: June 2022

ISSUED BY:

WORKFORCE CAPABILITY
AND GOVERNANCE, CMTEDD

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Purpose

1. This policy advice clarifies the treatment of recognition of prior service for employees moving into the ACT Public Service (ACTPS) from previous eligible employment. This policy advice also provides guidance for employees moving out of the ACTPS and into the Australian Public Service (APS).

Application

2. This policy advice applies to an employee who ceases employment with another eligible employer and then commences employment with the ACTPS. In most circumstances the move between the two employment entities must be immediate for an employee's eligible employment to be recognised as prior service (see the time limits that apply and a definition of eligible employment in section 87, Public Sector Management Standards 2016 (PSM Standards 2016)).
3. In this advice, an employee means an officer, temporary employee, casual employee, public sector member and a member of the senior executive service¹.

Key Legislative Provisions

4. The key legislative provisions are:
 - > Section 251 of the *Public Sector Management Act 1994* (PSM Act).
 - > Division 7.2 and section 113 of the Public Sector Management Standards 2016 (PSM Standards 2016);
 - > Sections 64 and 256, and Part 4.3 of the repealed Public Sector Management Standards 2006 (PSM Standards 2006);
 - > Section F of the ACTPS Enterprise Agreements; and
 - > Section 50 of the *Fair Work Act 2009 (Cth)* (Fair Work Act).

Background

5. Division 7.2 of the PSM Standards 2016 sets out the circumstances in which an employee's prior employment is eligible for recognition of prior service; and continuous service for the purposes

¹ Division 7.2 provides a definition of eligible employment and a mechanism for working out certain entitlements for public servants. The *Legislation Act 2001* defines 'public servant' as a person employed in the public service. Section 12 of the PSM Act establishes the ACT Public Service. It provides that members of the ACT Public Service are 'the senior executive service', 'officers' and 'employees'. A senior executive service member is a person engaged under section 31 of the PSM Act. An officer is a person appointed to an office on a permanent basis (see section 24 PSM Act). An employee is a person employed to exercise the functions of an office on a temporary basis (see section 25 and Part 5.8 PSM Act), which includes a person employed on a fixed term temporary or casual employment contract. The entitlement applies to 'public sector members' by virtue of section 150 of the PSM Act. A public sector member includes a statutory officeholder and a person employed by a statutory officeholder.

of leave and other entitlements such as redundancy payments. The accrual methods for all leave types are contained in the relevant enterprise agreement.

6. Sections 64 and 256, and Part 4.3 of the repealed PSM Standards 2006 set out the circumstances in which an employee's prior employment will be considered as recognised prior service for long service leave purposes. Sections 64 and 256, and Part 4.3 of the PSM Standards 2006 continue to apply by operation of section 113(1) of the PSM Standards 2016.

Eligible employment and entitlements

7. Prior service with a recognised entity, such as the Australian Public Service or a State or Territory Government, will only be recognised when the employee has ceased employment with the recognised entity, and they have joined the ACTPS after they have ceased their employment (i.e. an employee is not able to have their prior service recognised if they are employed by both entities at the same time or are on leave from their other employer while employed by the ACTPS or vice versa). Concurrent eligible employment with ACTPS employment will not be recognised.

Example 1 – Amelia is employed by the Victorian Public Service. She has taken leave without pay to work for the ACTPS on a full-time temporary contract. Amelia's concurrent service with the Victorian Public Service **will not be recognised** as eligible employment by the ACTPS. Amelia will commence employment with the ACTPS with nil leave balances and commence accrual of leave in accordance with the relevant ACTPS enterprise agreement.

Note: If Amelia eventually ceases employment with the Victorian Public Service while still employed with the ACTPS, Amelia may apply to have her prior Victorian Public Service (less any concurrent service) recognised as eligible employment.

Example 2 – Scarlett has resigned from the Australian Public Service (APS) and commenced employment with the ACTPS. Scarlett's prior service with the APS **will be recognised** by the ACTPS if the break between the employers does not exceed specified time limits.

Example 3 – Nik works in the APS for 2 days per week and the ACTPS for 3 days per week. Nik's concurrent service with the APS **will not be recognised** as eligible employment by the ACTPS. Note: If Nik eventually ceases his employment with the APS while still employed with the ACTPS, Nik may apply to have his prior service (less any concurrent service) with the APS recognised as eligible employment.

Example 4 – Jay is employed permanently with the ACTPS and has taken leave from the ACTPS that does not count as service to work for the APS concurrently. Jay's service with the APS **will not be recognised** as eligible employment by the ACTPS on his return from leave. Jay's APS leave entitlements will apply based on his employment conditions in the APS. Jay's ACTPS leave entitlements are placed on hold. Note: If Jay applies for leave from the ACTPS that counts as service prior to commencing employment with the APS, Jay's ACTPS leave entitlements may continue to accrue where appropriate. Any of Jay's unused APS entitlements are paid out in accordance with the FW Act and the relevant APS agency's enterprise agreement.

8. Eligible prior service will be recognised if the period between the completion of the prior employment and the commencement of employment with the ACTPS does not exceed the time limits set out in section 87 of the PSM Standards 2016 and sections 64 and 256 of the PSM Standards 2006 (see tables 1, 2 and 3 below for further information on the time limits).
9. For certain leave types, a break in service must not include any part of a working day (e.g. annual leave or paid birth leave). This means that an employee needs to resign from their employer on a day and then commence with the ACTPS on the following working day, where there is no break in 'office hours'. The *Legislation Act 2001* defines 'working day' as a day that is not a Saturday, Sunday or a public holiday in the ACT.

Note: To minimise the risk of a technicality in this circumstance, employees are encouraged to resign from their employer at 8.30am and commence employment with the ACTPS at 8.30am on the same day.

10. When an employee's employment is recognised as prior service under section 87 of the PSM Act, the associated leave and other entitlements (except personal leave and annual leave) are calculated in accordance with the period of the employee's eligible employment (less any non-accrual period), the relevant leave accrual method under the employee's enterprise agreement and from the employee's entitlement day².
11. In certain circumstances, recognising eligible employment for prior service may require automatic recognition of leave balances/credits from the previous employment in accordance with Section 87 of the PSM Standards 2016 (see ['Payment of leave liability'](#)). Please note that where monetary payments are sent with the leave balances being transferred from the previous employer, this is managed through the relevant directorate strategic Human Resources and/or finance area.

Calculating credits – personal leave

12. When an employee's employment is recognised as prior service for personal leave purposes (i.e. the employee has not had a break in service of more than 2 months between eligible employments), the employee will be credited with any personal leave balance accrued with their previous employer as per section F4.5 of the ACTPS enterprise agreement, including where that balance was zero.
13. In the absence of a personal leave balance (i.e. when it is confirmed that the employee had a personal leave entitlement with their previous employer but no balance is available to be provided by the employer) the personal leave balance is calculated in accordance with section 89 of the PSM Standards 2016. Where an employee has no record of personal leave taken, the ACTPS will assume 5 days were taken for each year of prior eligible service, and is to be deducted from the credits provided.³ A part-time employee's entitlement is worked out on a proportionate (pro-rata) basis.

Note: Where a delegate has recognised Australian Defence Force (ADF) employment as prior service in accordance with section 88 of the PSM Standards 2016, personal leave credits will be

² See section 89, PSM Standards 2016 (Working out accrual of entitlements).

³ See section 89 (1) PSM Standards 2016.

calculated as stated above and in accordance with section 89 of the PSM Standards 2016 and clause F4 of the enterprise agreement. Please see paragraphs 34-41 for more information.

Calculating credits – long service leave

14. When an employee's employment is recognised as prior service for long service leave purposes, (i.e. the employee has not had a break of more than 12 months between eligible employments), the long service leave balance is calculated in accordance with section 64 and part 4.3 of the PSM Standards 2006 accrual conditions and entitlements. This may mean that an employee's recalculated leave credits in accordance with ACTPS accrual methods may not be the same balance as what the employee had with their previous employer.
15. Where there is a negative balance as an outcome of recalculating prior service leave entitlements in accordance with section 64/part 4.3 of the PSM Standards 2006, the leave credits provided to the employee at commencement with the ACTPS will be zero.

Calculating credits – annual leave

16. When an employee's eligible employment is recognised as prior service for annual leave purposes, (i.e. the employee has not had a break of more than a part of a working day between APS and ACTPS eligible employment), the employee will be credited with any annual leave balance accrued with their previous employer, including where that balance was zero, less any entitlements which were taken or paid in lieu. .
17. Unbroken periods of permanent and temporary employment will constitute continuous employment for the purpose of calculating annual leave credits. Casual employment will not be recognised for continuous eligible employment for anything other than long service leave and unpaid birth leave.
18. The employee (through their previous employer) is responsible for making application to have their prior service and leave entitlements recognised and is also responsible for providing evidence of their prior service and leave entitlements to the ACTPS. This can be completed via the [Statement of Service from Previous Employer – Recognition of Prior Service form](#) and should include employer details, start and end dates of employment periods, hours of employment, leave taken/paid in lieu and periods of breaks in service and/or leave not to count as service. Shared Services may verify the information through the employee's previous employer.
19. The ACTPS entitlement may be reduced by any period for which an employee received a redundancy-type payment/severance payment from the prior employer⁴. The entitlement will also be reduced by a period of unapproved absence, any period of leave taken or any period for which a payment in lieu of the leave was made to the employee by the previous employer (e.g. where the employee received a pay out in lieu of the balance of their untaken annual leave

⁴ If an employee received a redundancy payment, it does not necessarily mean that long service leave has been paid out. The *Long Service Leave (Commonwealth Employees) Act 1976* allows an employee to decline a long service leave payment on cessation. In these circumstances, the service and entitlement would be carried over.

entitlement upon resignation with the previous employer under section 90 of the Fair Work Act, the employee's entitlement for annual leave will be zero on commencement with the ACTPS)⁵.

20. In exceptional circumstances, the Head of Service (or delegate) may decide that other prior employment of an employee is eligible employment for the purpose of recognising prior service⁶.

21. This advice outlines the relevant arrangements for the following situations:

- > ACT ELIGIBLE EMPLOYMENT → TO ACT PUBLIC SERVICE
- > AUSTRALIAN PUBLIC SERVICE EMPLOYMENT → TO ACT PUBLIC SERVICE
- > ELIGIBLE EMPLOYMENT WITH A STATE GOVERNMENT, PUBLIC HEALTH ORGANISATION, GOVERNMENT OWNED ENTITY OR LOCAL GOVERNMENT BODY → TO ACT PUBLIC SERVICE
- > EMPLOYMENT WITH CALVARY PUBLIC HOSPITAL → TO ACT PUBLIC SERVICE
- > OTHER ELIGIBLE EMPLOYMENT & HEAD OF SERVICE DISCRETION → ACT PUBLIC SERVICE

ACT ELIGIBLE EMPLOYMENT → TO ACT PUBLIC SERVICE

22. Prior employment with an ACT public sector body or a Territory-owned corporation will be recognised as 'ACT Employment' as defined by the PSM Standards 2016 for the purpose of recognising prior service. The table below outlines the relevant arrangements for recognising ACT eligible employment when employees move to the ACTPS. A flowchart is also provided to illustrate leave recognised from ACT eligible employment to the ACTPS.

Table 1: ACT employment to ACT Public Service

Entitlement	Arrangements	Authority
Annual leave	<p>For a public sector body, the ACTPS will recognise annual leave where the break in permanent or temporary (excluding casual) service does not include any part of a working day.</p> <p><i>Note:</i> The Territory is considered to be the legal entity who is the employer for the ACT Public Service and ACT public sector bodies. The obligation to pay out annual leave entitlements under section 90(2) of the Fair Work Act does not exist between the ACT Public Service and a public sector body because the officer is not resigning from ACT employment.</p>	PSM Standards 2016, s 87

⁵ See section 89 of the PSM Standards 2016 (Working out accrual of entitlements), specifically the non-accrual period in a period of eligible employment is any period for which a payment instead of leave was made to the employee. Also see section 264(11) of the PSM Standards 2006 (Entitlement—long service leave).

⁶ Section 88, PSM Standards 2016 (see [Other eligible employment](#)).

For a territory-owned corporation, the ACTPS will recognise annual leave where the break in permanent or temporary (not casual) service does not include any part of a working day. However, if the previous employer paid the employee their untaken annual leave in accordance with section 90(2) of the Fair Work Act⁷, the employee's annual leave entitlement on commencement will be zero.

Annual leave loading	The ACTPS will recognise prior service for annual leave loading where the break in permanent or temporary (excluding casual) service does not include any part of a working day.	PSM Standards 2016, s 87
Personal leave	<p>For a public sector body, the ACTPS will recognise personal leave where the break in permanent or temporary (excluding casual) service is not greater than 2 months.</p> <p>For a territory-owned corporation, the ACTPS will recognise personal leave where the break in permanent or temporary (not casual) service is not greater than 2 months.</p> <p>However, if the previous employer paid the employee their unused personal leave in accordance with the Icon Water and Combined Unions Enterprise Agreement⁸, the employee's service is recognised but the balance will reset and then operate as if the employee had been employed – i.e. 3.6 weeks of personal leave granted on commencement, in line with clause F4.8 of the ACTPS Enterprise Agreement provisions for permanent public servants.</p>	PSM Standards 2016, s 87
Long service leave	<p>The ACTPS will recognise prior service for long service leave accrual where the break in permanent, temporary or casual service is not greater than 12 months.</p> <p>Note: continuity of service is not broken by a break in service of over 12 months if the first service was with the Territory.</p>	PSM Standards 2006, s 64 and s 256 and PSM Standards 2016, s 113

⁷ Section 90, Fair Work Act 2009 (Payment of annual leave).

⁸ The Icon Water and Combined Unions Enterprise Agreement includes a provision to payout accrued unused personal leave on resignation, retirement or retrenchment. In this situation, the ACTPS would not recognise any personal leave that is paid out, consistent with clause F4.6 of the ACTPS Enterprise Agreements.

Paid maternity leave (paid birth leave)/paid primary caregiver leave	The ACTPS will recognise prior service for paid maternity leave (birth leave) purposes where the break in permanent or temporary service does not include any part of a working day. Casual employment cannot be recognised as prior service for paid maternity leave (paid birth leave)/paid primary caregiver leave purposes, however may be recognised in accordance with the Fair Work Act for unpaid birth leave.	PSM Standards 2016, s 87
Operational service personal leave	The ACTPS will recognise prior service for operational service personal leave purposes where the break in permanent or temporary (excluding casual) service does not include any part of a working day.	PSM Standards 2016, s 87
Redundancy payment	<p>If an officer is made redundant by the ACTPS, the ACTPS recognises all prior permanent or temporary (excluding casual) service in ACT employment for redundancy purposes where the break in service does not include any part of a working day.</p> <p><i>Note:</i> This would not include prior service that was subject to any previous severance payment.</p>	PSM Standards 2016, s 87

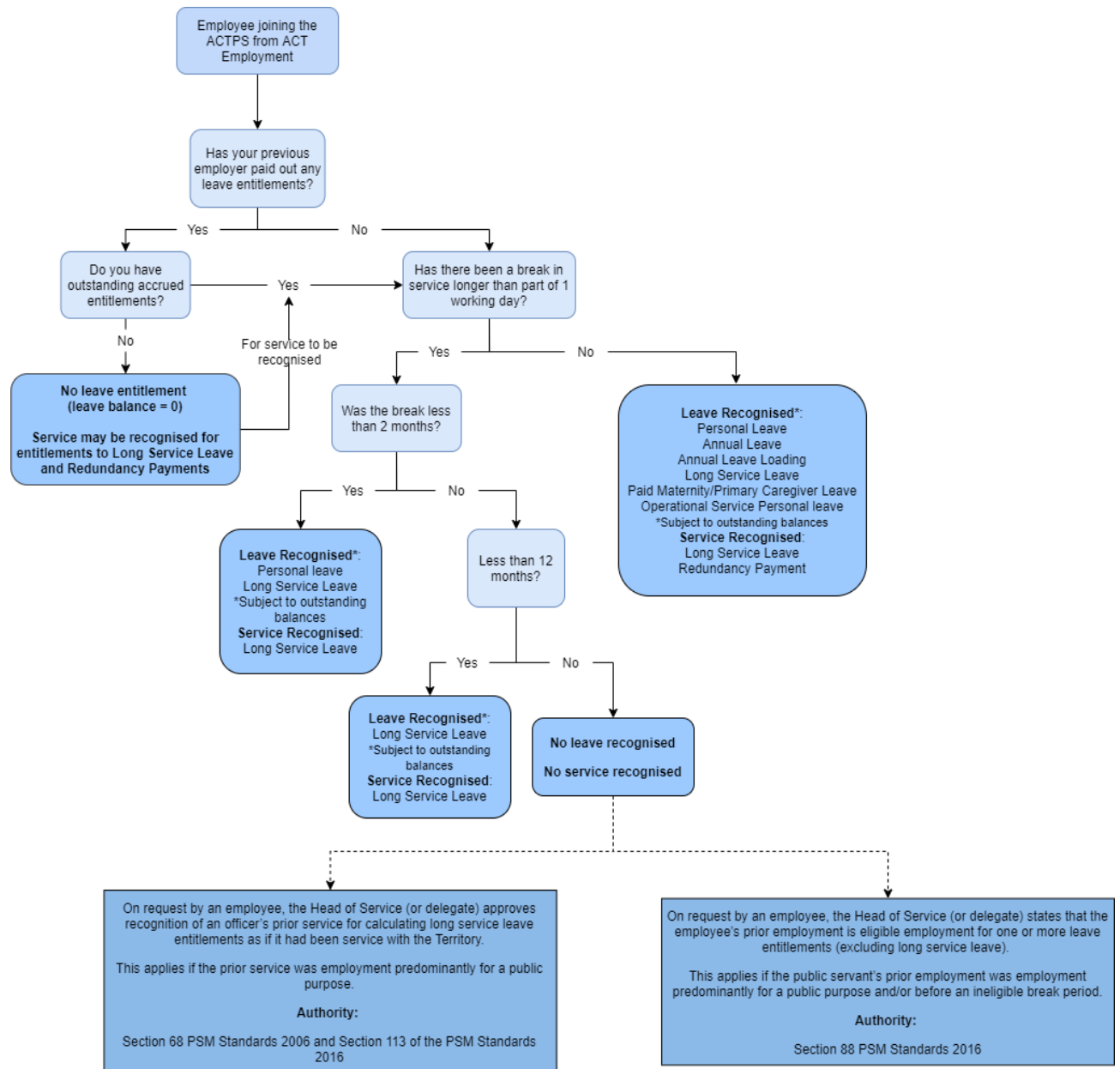
Recognition of prior service for employment on re-entry to the ACTPS under specific circumstances

23. For an employee who re-enters the ACTPS under conditions set out in part 7 of the PSM Act, the entire period of their resignation to their re-entry date is not counted as a break in service. For example, if a person resigned to run as a candidate for the ACT election and is unsuccessful in securing a seat, and then recommences working for the ACTPS under provisions in part 7 of the PSM Act, the entire period from their resignation to re-entry date is not counted in terms of the break period.

Recognition of prior service for employment with the Legislative Assembly

24. An employee who takes a period of leave without pay from the ACTPS to work for a Minister is entitled to have their service recognised. The period of leave without pay should be applied for as 'Other leave: where leave cannot be granted under any other provision' or 'Other Leave: Engage in Employment in the Interests of the ACTPS' and processed as leave without pay to count as service.
25. Where the employee is requesting recognition of prior service of their employment with the Legislative Assembly, the prior employment may be recognised in accordance with section 88 of the PSM Standards 2016, where the delegate has determined that it meets eligibility requirements.

Illustration of prior service recognised for leave and continuity of service purposes – ACT eligible employment to ACTPS



AUSTRALIAN PUBLIC SERVICE EMPLOYMENT → TO ACT PUBLIC SERVICE

26. Prior employment with the Australian Public Service (APS) is eligible employment for the purpose of ACTPS prior service recognition provisions. APS employment is employment under the *Public Service Act 1999 (Cth)*. The table below outlines the relevant arrangements for employees ceasing employment with the APS to join the ACTPS. A flowchart is also provided to illustrate the prior service that is recognised for leave and continuity of service purposes.

Table 2: APS employment to ACTPS

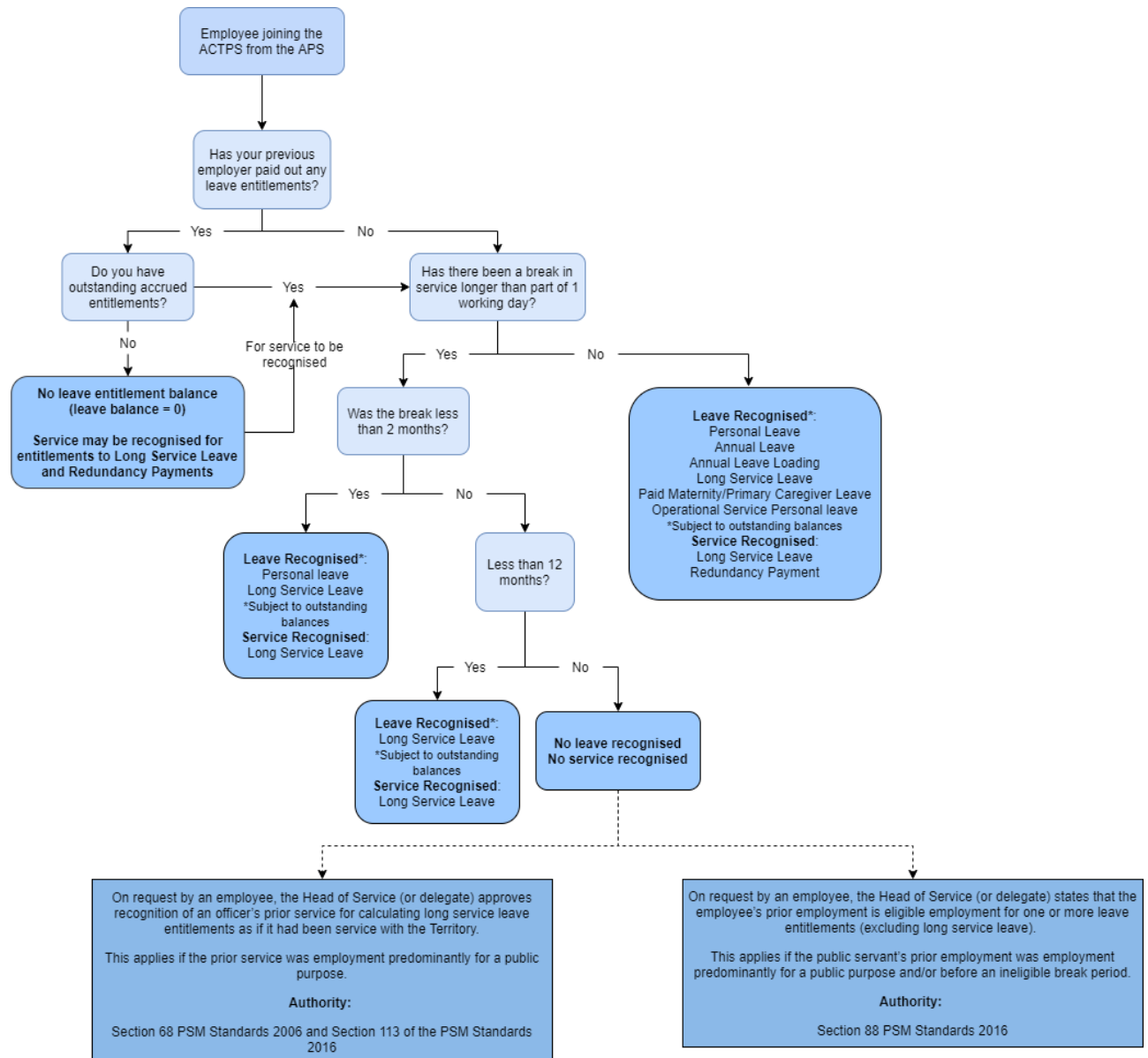
Entitlement	Arrangements	Authority
Annual leave	<p>The ACTPS will recognise prior service for annual leave purposes if the break in permanent or temporary (excluding casual) service does not include any part of a working day, where the employee has not been paid the amount that would have been payable had the employee taken the accrued period of annual leave upon resignation in accordance with section 90(2) of the Fair Work Act. However, if the previous employer paid the employee their outstanding annual leave balance in accordance with section 90(2) of the Fair Work Act⁹, the employee's entitlement will be zero.</p> <p>Note: If a subsequent payment of accrued annual leave is made by the previous employer under section 90(2) of the Fair Work Act following the ACTPS recognising the entitlement, the ACTPS will reduce the employee's entitlement accordingly. The ACTPS may request the employee's leave records to confirm leave balances if the head of service believes it reasonably necessary.</p>	PSM Standards 2016, s 87
Annual leave loading	The ACTPS will recognise prior service for annual leave loading where the break in permanent or temporary (excluding casual) service does not include any part of a working day.	PSM Standards 2016, s 87
Personal leave	The ACTPS will recognise the prior service for personal leave purposes where the break in permanent or temporary (excluding casual) service is not greater than 2 months. Personal leave entitlements/credits will be calculated in accordance	PSM Standards 2016, s 87

⁹ Section 90(2) of the Fair Work Act (Payment of annual leave) provides that employers must pay the employee the amount that would have been payable had the employee taken the accrued period of annual leave upon resignation.

with clause F4.6 of the relevant enterprise agreement.

Long service leave	The ACTPS will recognise the prior service for long service leave accrual where the break in permanent, temporary or casual service is not greater than 12 months. Long Service Leave entitlements/credits will be calculated in accordance with section 64 and part 4.3 of the PSM Standards.	PSM Standards 2006, s 64 and s 256 and PSM Standards 2016, s 113
Paid maternity leave (Birth leave)/paid primary caregiver leave	The ACTPS will recognise the service for paid maternity leave (birth leave) where the break in permanent or temporary (excluding casual) service does not include any part of a working day. However, casual employment may be recognised as prior service in accordance with the Fair Work Act for unpaid birth leave.	PSM Standards 2016, s 87
Operational service personal leave	The ACTPS will recognise service for operational service personal leave where the break in permanent or temporary (excluding casual) service does not include any part of a working day.	PSM Standards 2016, s 87
Redundancy payment	If an officer is made redundant by the ACTPS, the ACTPS recognises all prior service with the APS for redundancy purposes where the break in permanent or temporary (excluding casual) service does not include any part of a working day. <i>Note:</i> Any previous redundancy payment from the APS would reduce the severance payment.	PSM Standards 2016, s 87

Illustration of prior service recognised for leave and continuity of service purposes - APS employment to ACTPS



ELIGIBLE EMPLOYMENT WITH A STATE GOVERNMENT, PUBLIC HEALTH ORGANISATION, GOVERNMENT OWNED ENTITY OR LOCAL GOVERNMENT BODY → TO ACT PUBLIC SERVICE

27. The table below outlines the relevant arrangements for employees transferring from employment with a State government (including the Northern Territory¹⁰), Commonwealth employment not covered by the *Public Service Act 1999 (Cth)*, public health organisation or government owned entity to the ACTPS. These types of employment include employment with a State public service or State public authority, employment predominantly for delivering acute public health care services or employment with an entity established under a law of a Territory, the Commonwealth or a State which has been established for a public purpose or is a local governing body. A flowchart is also provided to illustrate leave recognised from employment with a State government, public health organisation or government owned entity to the ACTPS.

Table 3: Employment with a State Government, Public Health Organisation or Government Owned Entity to ACTPS

Entitlement	Arrangements	Authority
Annual leave ¹¹	Not recognised by ACTPS. Note: Also see Other eligible employment – Head of Service discretion	
Annual leave loading	Not recognised by ACTPS.	
Personal leave	The ACTPS will recognise personal leave where the break in permanent or temporary service (excluding casual) is not greater than 2 months between eligible employment. Personal leave entitlements/credits will be calculated in accordance with clause F4.6 of the relevant enterprise agreement.	PSM Standards 2016, s 87
Long service leave	The ACTPS will recognise prior service for long service leave accrual where the break in permanent, temporary or casual service is not greater than 12 months and the service at the time was: <ul style="list-style-type: none"> a) with a government agency; b) with a public authority; 	PSM Standards 2006, s 64 and s 256 and PSM Standards 2016, s 113

¹⁰ The term State is defined in the *Legislation Act 2001* to mean a State of the Commonwealth and includes the Northern Territory.

¹¹ Section 90(2) of the Fair Work Act (Payment of annual leave) provides that employers must pay the employee the amount that would have been payable had the employee taken the accrued period of annual leave upon resignation.

- c) with a wholly government owned organisation, body or corporation;
- d) with a territory-owned corporation;
- e) predominately for the purpose of delivery acute public health care services.

A government agency¹² means:

- an administrative unit;
- a territory instrumentality;
- a statutory office holder and staff required to assist the statutory office holder.

A public authority¹³ is a reference to:

- an authority, whether incorporated or not, that was or is constituted by or under the law of the Territory, the Commonwealth, a State or another Territory for a public purpose; or
- a local governing body that was or is established by or under a law of the Commonwealth, a State or another Territory.
- Long Service Leave entitlements/credits will be calculated in accordance with section 64 and part 4.3 of the Public Sector Management Standards 2006

Entitlement	Arrangements	Authority
Paid maternity leave (Birth leave)/paid primary caregiver leave	For public health employment by a Territory or Commonwealth entity or employment by an entity at least 50% owned solely or jointly by the Territory, Commonwealth or a State the ACTPS will recognise service for paid maternity leave (birth leave) purposes where the break in permanent or	PSM Standards 2016, s 87

¹² The term government agency is defined in the PSM Act Republication No 36.

¹³ The term public authority is defined in the PSM Act Republication No 26.

temporary (excluding casual) service does not include any part of a working day. However, casual employment may be recognised as prior service in accordance with the Fair Work Act for unpaid birth leave.

Operational service
personal leave

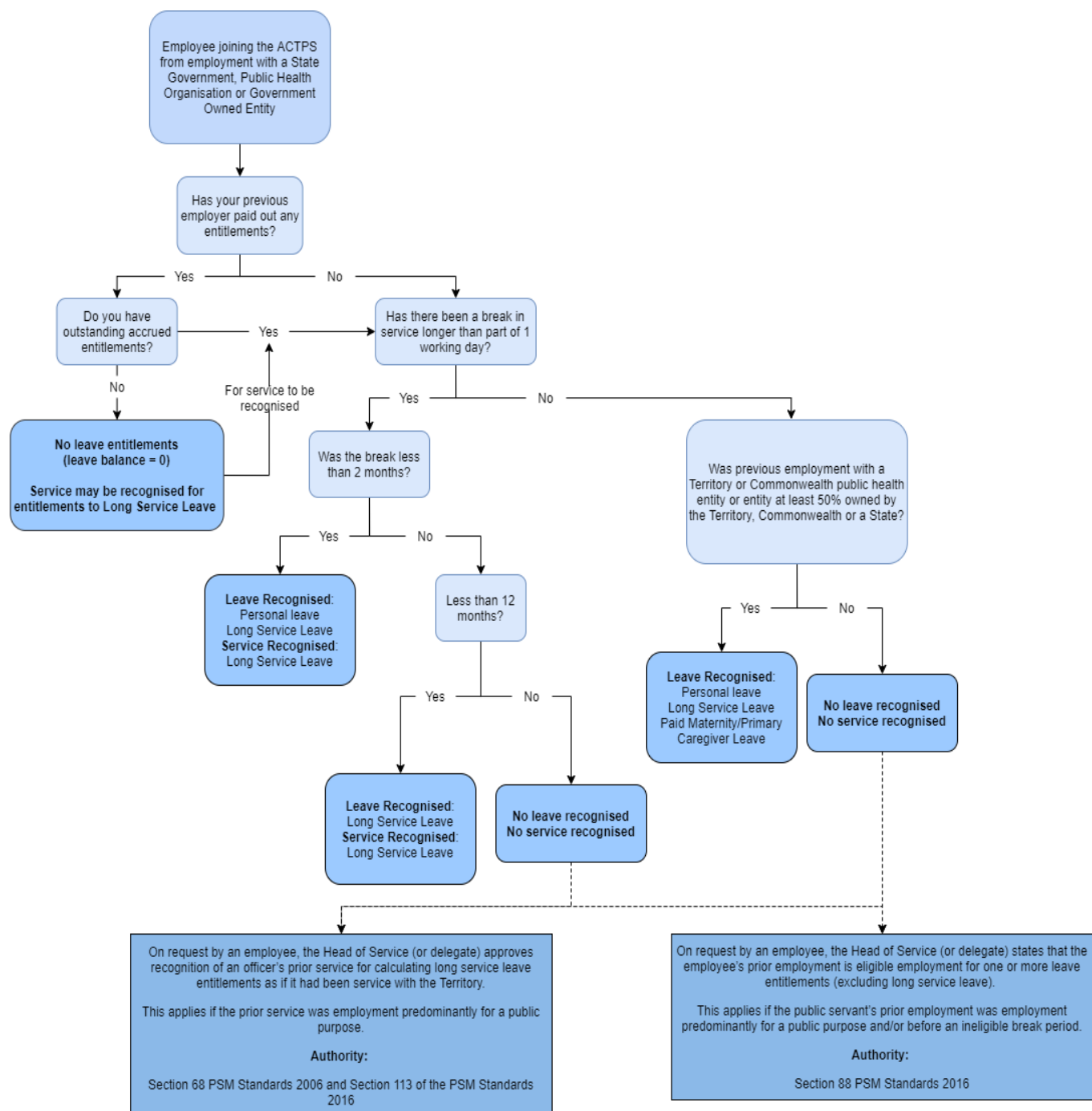
Not recognised by ACTPS.

Redundancy payment

Not recognised by ACTPS.

28. The employee must provide evidence that the entity they were employed by is an organisation or entity as described above (i.e. at least 50% owned solely or jointly by the Territory, Commonwealth or a State). If the employee is unable to provide the evidence, their request may need to be considered by a delegate under section 88 of the PSM Standards 2016 (for further information see [other eligible employment](#) section of this policy advice).

Illustration of prior service recognised for leave and continuity of service purposes – Eligible employment with a State Government, Public Health Organisation, Government Owned Entity or local Government body to ACTPS



EMPLOYMENT WITH CALVARY PUBLIC HOSPITAL → TO ACT PUBLIC SERVICE

29. The recognition of prior service for Calvary Public Hospital employment will depend on the individual circumstances and employment arrangements that applied to the Calvary Public Hospital employee. Recognition of prior service for Calvary Public Hospital employment will need to be considered on a case-by-case basis by the relevant delegate and HR area. Relevant employment documentation may need to be considered to ascertain whether recognition of prior service applies.
30. Generally, if the individual was appointed or employed under the PSM Act to work in the Calvary Public Hospital, their prior employment is recognised in the same way as [ACT employment](#). In this circumstance, the individual has the ability to request that their annual leave, personal leave and long service leave balances are transferred to the ACTPS, where the prior service has been recognised and is within the specified time limits in accordance with section 87 of the PSM Standards 2016.
31. If an individual has not been appointed or employed under the PSM Act to work in Calvary Public Hospital, the prior employment may be eligible employment under [public health employment](#). In this circumstance, the individual has the ability to request that their personal leave and long service leave balances are transferred to the ACTPS where the prior service has been recognised and is within the specified time limits in accordance with section 87 of the PSM Standards 2016.
32. Prior service for calculating long service leave accrual is recognised under section 64 of the PSM Standards 2006 as the employment is 'predominantly for the purpose of delivering acute public health care'.
33. Where the employee meets the circumstances as described by paragraph 31, they may apply to the Head of Service to have their annual leave entitlement recognised as prior service (for further information see [other eligible employment](#) – head of service discretion' of this policy advice).

OTHER ELIGIBLE EMPLOYMENT & HEAD OF SERVICE DISCRETION → ACT PUBLIC SERVICE

34. Under section 88 of the PSM Standards 2016, if asked by an employee, the Head of Service (or delegate) may state, in writing, that the employee's prior employment is eligible employment for one or more leave entitlements (excluding long service leave), if their prior employment was employment predominantly for a public purpose and/or before an ineligible break period as set out in the table in section 87 and section 89 of the PSM Standards 2016.
35. The Head of Service (or delegate) will consider the written request on whether to accept the employee's prior employment as eligible employment for the purposes of recognising prior service (section 88 of the PSM Standards 2016).
36. Generally, the discretion provisions are only used in exceptional circumstances (e.g. the person brings highly specialist skills that are difficult to recruit to the ACTPS, or a period of unrecorded employment that cannot be verified by other means).
37. If a former Australia Defence Force (ADF) member seeks recognition of their ADF employment as prior service and it is recognised in accordance with paragraphs 34 to 36 above, they may not

have a personal leave balance to bring with them due to the nature of ADF personal leave arrangements. In this instance, the employee can seek access to their personnel file through the Department of Veterans Affairs to establish how much personal leave was accessed during their period of service, or their personal leave balance can be calculated in accordance with section 89 of the PSM Standards 2016. Where the ADF has no record of personal leave taken, the ACTPS will assume 5 days were taken for each year of prior eligible service, and is to be deducted from the credit provided.

38. Where a delegate decides that an employee's prior employment is eligible employment under section 88, they must specify in writing the reason, what is recognised and for what purpose.

Example – Canberra Health Services has experienced difficulty in recruiting Gastroenterologists to the ACTPS. Dani has been working full time for five years as a Gastroenterologist for a not-for-profit organisation offering services to homeless community members through grants from the ACT Government. Dani has been offered a permanent full time position in the ACTPS. Dani has requested the Head of Service (or delegate) to state that her prior employment is eligible and continuous employment for the purposes of personal leave and birth leave only, and the delegate in Canberra Health Services has agreed to this request in writing on the basis that her employment was predominately for a public purpose (and as an attraction incentive). Dani has not negotiated for her annual leave entitlements to be transferred over to the ACTPS as they have been paid out from Dani's previous employer in accordance with the Fair Work Act and therefore Dani's annual leave will commence accruing from Dani's commencement date with the ACTPS.

ACTPS employee moving to the Australian Public Service

39. The Australian Public Service Commission has an [advice note](#)¹⁴ on their website about the employment of ACT Public Service employees as APS employees, which outlines the portability of leave under relevant Commonwealth legislation and service for redundancy purposes. Be aware that the above advice note may change according to Australian Public Service policy and it is in the employee's best interest to seek up to date information from the relevant APS HR area of the agency.
40. Where an employee ceases employment with the ACTPS to take up new employment with the APS, it is recommended that employees contact the gaining APS agency to confirm arrangements and entitlements under the relevant APS agency's enterprise agreement. Where employees have the option to either transfer their entitlements or have entitlements paid out by the ACTPS, it is recommended that employees seek independent legal or financial advice on their particular circumstances regarding recognition of service and the transfer of leave balances.

¹⁴ See <https://www.apsc.gov.au/employment-act-public-service-employees-aps-employees>

41. If an ACTPS employee is taking a period of leave which does not count as service while working for the APS, the employee's leave entitlement/s in the ACTPS are to be placed on hold (ie the leave does not accrue), unless the employee has requested, and the leave delegate has approved, for the employee to access a leave type, which counts as service in accordance with section F or Annex D of the Enterprise Agreement. As previously noted, portability of service while concurrently employed within the ACTPS and APS is not normally possible in accordance with prior service provisions, however it is recommended that employees contact the APS agency directly to confirm arrangements and entitlements within the APS in regards to concurrent service.

Payment of leave liability

42. The ACTPS may ask or come to an agreement with a previous employer to provide the ACTPS a payment associated with the employee's unused long service leave credits (and where relevant, unused annual leave credits from the APS) which are being recognised as prior service by the ACTPS (whether automatically recognised in accordance with section 87 or by a delegate's decision in accordance with section 88). However, regardless of whether the previous employer agrees to this request, the ACTPS can not refuse to recognise the employee's prior service (including applicable balances) if it is for eligible employment under section 87 of the PSM Standards 2016. Directorates/agencies are responsible for arranging any such payment of unused leave entitlements from the previous employer to the ACTPS.
43. As a reciprocal arrangement, the ACTPS has taken the policy position that where requested by an employee who gains employment with the APS or another State/Territory Government and the new employer will accept it, the employee's outstanding long service leave entitlement will be paid by the ACTPS to the new employer, rather than the individual. This arrangement extends to annual leave if an employee gains employment with the APS, subject to the relevant APS Department's Enterprise Agreement Payment to the new employer is handled by the relevant directorate HR/finance area and should be discussed prior to the employee ceasing their employment with the ACTPS.

Please note: the portability of annual leave from the ACTPS to the APS is covered under Commonwealth legislation at section 25 of the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* which allows the portability of annual leave entitlements/credits from the ACTPS to the APS **without** the need to transfer funds to the APS along with it.

44. It is the responsibility of the employee to understand the impact of requesting their leave balances to be transferred to the APS instead of having their leave balances paid out in their final entitlements by the ACTPS. The onus is on the employee to be aware of the impact on their entitlements before making a request to the Head of Service (or delegate). It is recommended that employees seek independent legal or financial advice before making a request.

Legislative References

45. The relevant legislation, policy and employment arrangements underlying this operational guidance are:

- [ACTPS Enterprise Agreements](#)
- [Public Sector Management Act 1994](#)

- [Public Sector Management Standards 2016](#) – Division 7.2
- [Public Sector Management Standards 2006](#) (repealed), which continue to apply by operation of section 113(1) of the PSM Standards 2016
- [Fair Work Act 2009](#)
- [Australian Capital Territory Government Service \(Consequential Provisions\) Act 1994](#) (Cth) – Part 5, section 25

Further Information

46. For further information please contact, please contact the Executive Group Manager, Whole of Government Industrial Relations and Public Sector Employment, Workforce Capability and Governance Division, Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

Review

47. This policy advice is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

Document name: Prior Service Recognition Policy	Prepared by: Assistant Director, Industrial Relations and Public Sector Employment, Workforce Capability and Governance Division, CMTEDD
Policy Number: 12/2022	Feedback to: eba@act.gov.au
Issue Date: 20 June 2022	Review Date: 10 October 2025

Approval Authority

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 On behalf of the Head of Service
 20 June 2022



WORKFORCE CAPABILITY AND GOVERNANCE

JUNE 2022