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## VPS Enterprise Agreement Common Policies

# LONG SERVICE LEAVE

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## Authority and Application

Clause 54 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 54 of the Agreement sets out a full-time Employee's entitlement to Long Service Leave. Part-time and casual Employees are entitled to long service leave on a pro rata basis.

In accordance with clause 54.3 of the Agreement, Employees are entitled to access their Long Service Leave entitlement on a pro-rata basis, after an initial seven years of paid continuous employment.

The Employer may determine the time for granting long service leave so that the Employer's operations will not be unduly affected.

The entitlements contained in the Agreement wholly detail an Employee's entitlement to long service leave and generally operate to the exclusion of Victorian long service leave legislation (unless explicitly provided for in clause 54 of the Agreement).

## Relevant provisions of the VPS Enterprise Agreement

### Clause 54. Long Service Leave

#### 54.1 Basic Entitlement

An Employee is entitled to 495.6967 hours (three months) long service leave with pay for each period of ten years' paid full-time Continuous Service in the VPS. An Employee who is a part-time Employee for the purposes of **clause 15.5** is entitled to long service leave on a pro rata basis calculated on the number of ordinary hours worked. The entitlement is 521.786 hours for Employees whose ordinarily hours of work average 80 hours per fortnight.

## **54.2 Meaning of continuous Service for casual Employees**

For the purposes of this clause, a reference to Continuous Service in respect of a casual Employee has the same meaning as that set out in section 62A of the *Long Service Leave Act 1992* (Vic).

## **54.3 Pro-rata access**

An Employee is entitled to access their long service leave entitlement, on a pro-rata basis, after an initial seven years of paid Continuous Service.

## **54.4 Payment of outstanding entitlement on termination**

An Employee, who, upon retirement, resignation or termination of employment, has an outstanding long service leave entitlement will be entitled to an amount equal to the unused long service leave entitlement.

## **54.5 Holidays During Leave**

Where a Public Holiday occurs during a period of long service leave granted to an Employee, the Public Holiday is not to be regarded as part of the long service leave and the Employer will grant the Employee a day off in lieu.

## **54.6 Eligible Period of Service**

- (a) In **clause 54.6** “eligible period of service” in relation to an Employee means the period of Continuous Service between four years and seven years.
- (b) An Employee is entitled, or in the case of death is deemed to have been entitled, to a pro rata amount of long service leave with pay based on the Employee’s eligible period of service in the VPS if:
  - (i) on account of age or ill health:
    - the Employee retires or is retired; or
    - the employment of the Employee is terminated by the Employer; or
  - (ii) the employment of the Employee is terminated for any other reason except for serious misconduct or resignation by the Employee; or
  - (iii) the Employee dies.

## **54.7 Period of Leave**

- (a) An Employee who is entitled to take their long service leave will take the whole or any part of their entitlement at the current time fraction they work. For the avoidance of doubt, but subject to operational requirements, an Employee may take long service leave of one day.

- (b) Despite **clause 54.7(a)**, the Employer and the Employee may agree that the whole or any part of their entitlement can be taken at a different time fraction to that currently worked.
- (c) After concluding their period of leave, the Employee will return to the time fraction they worked immediately prior to going on leave, unless otherwise agreed by the Employer and the Employee.

#### **54.8 Time of Taking Leave**

The Employer may determine the time for granting long service leave so that the Employer's operations will not be unduly affected by the granting of long service leave.

#### **54.9 Recognised Service**

- (a) In **clause 54.9(b)** an "authority" means an authority, whether incorporated or not, that is constituted:
  - (i) by or under a law of a State, the Commonwealth or a Territory of Australia; and
  - (ii) for a public purpose.
- (b) Subject to **clause 54.9(c)** the following will be recognised as service in the VPS for the purposes of long service leave ("Recognised Service"):
  - (i) any service with a State, Commonwealth or Territory of Australia Government Department or Public Service authority; or
  - (ii) any service with a public entity under the *Public Administration Act 2004* (Vic); or
  - (iii) any service with a local governing body that is established by or under a law of Victoria.

Notwithstanding the above, the Employer may recognise any service with:

- a public sector authority; or
  - a local governing body of the Commonwealth, a State other than Victoria or a Territory of Australia
- (c) Service for the purpose of long service leave does not include any period of service:
    - (i) which preceded a continuous gap in approved Recognised Service of greater than twelve months other than:
      - an absence of three years or less in the nature of retirement occasioned by disability; or
      - an absence of two years or less which in the opinion of the Employer was caused by special circumstances; or

- (ii) during any absence from duty on maternity, paternity/partner or adoption leave without pay; or
  - (iii) except to the extent (if any) authorised by the Employer, during any other absence on leave without pay; or
  - (iv) during any absence from duty when the Employee was in receipt of weekly payments of compensation under the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) or any corresponding previous enactment, other than the first twelve months of that period; or
  - (v) which followed the date on which a pension under the *State Superannuation Act 1988* (Vic) (or similar provision applying to Employees on the staff of a declared authority) became payable by reason of retirement on the ground of disability, other than a period not exceeding twelve months during which a pension under section 83A(1) of that Act (or similar provision applying to Employees of a declared authority) was paid; or
  - (vi) from which the Employee was dismissed for disciplinary reasons.
- (d) An Employee who has received a Targeted Separation Package from the Victorian Public Sector will, on re-employment in the VPS, have their prior service recognised, provided that this service does not precede a continuous gap in approved recognised service of greater than twelve months.
- (e) An Employee who has received a Voluntary Departure Package from the Victorian Public Sector will not have their prior service recognised on re-employment in the VPS.
- (f) An application for the recognition of prior service under **clause 54.9** should be made within six months of an Employee's starting date in the VPS. The Employer will take reasonable steps within this period to ascertain from the Employee whether the Employee has prior service.

#### **54.10 Payment for Leave**

In computing the pay of an Employee for or in lieu of long service leave, that pay includes:

- (a) if the Employee is receiving salary maintenance, that salary maintenance; and
- (b) any additional payment payable for a temporary assignment where the assignment has continued for a period of at least twelve months before the commencement of the leave; and

- (c) any annual allowance payable to the Employee which the Employer determines should be included, but does not include:
  - (i) any payment of overtime, commuted overtime or Shift Work allowances; or
  - (ii) any travelling or transport allowance; or
  - (iii) any allowance in the nature of reimbursement of expenditure.
- (d) Nothing in this **clause 54** entitles an Employee to long service leave (or payment for long service leave) in respect of a period of service for which the Employee was entitled to receive long service leave (or payment for long service leave) from an employer other than the Employer or for which the Employee has received long service leave (or a payment in respect of long service leave) from any Employer.

## Specific arrangements for Employees of Department of Health and Human Services (Appendix 4)

### 4. Leave at Half Pay

The Employee may apply for annual leave, personal leave, parental leave, compassionate leave or long service leave at half pay. Employer approval for such leave arrangements will be subject to capacity to maintain workplace activities in the Employee's absence. Any public holiday that falls during a period of leave on half pay will be paid at full pay.

## Supplementary Guidance Information

### 1. Calculation of Long Service Leave entitlement

- 1.1. Part-time and casual Employees accrue Long Service Leave on a pro-rata basis calculated on the number of ordinary hours worked.
- 1.2. Employees are entitled to receive payment during Long Service Leave based on the Employee's normal weekly hours at their ordinary time rate of pay. Clause 54.10 of the Agreement details how allowances, loadings and other similar payments should be treated in calculating pay for the purposes of long service leave or payment in lieu.
  - 1.2.1. Subject to clause 54.10 of the Agreement where there is no fixed ordinary rate of pay, pay will be computed in the same manner as if the Employee had remained on duty during that period.

- 1.2.2. Payment for Long Service Leave will be made at the same time as the Employee would have received the pay if the Employee were still at work or in any other way as agreed between the Employer and Employee, including leave at half pay. In exceptional circumstances, the Employer may agree to pay Long Service Leave in full at the start of the leave period.
- 1.3. When calculating Long Service Leave and pay in lieu entitlements, the following details will be recorded and deducted:
  - 1.3.1. Leave without pay;
  - 1.3.2. Long Service Leave which has been previously granted;
  - 1.3.3. Periods for which payment in lieu of leave were made; and
  - 1.3.4. Any gaps in service which do not count as service but which do not break continuity.
- 1.4. Further, consistent with clause 54.10(d) of the Agreement, the Employer is not required to pay the Employee for any period:
  - 1.4.1. for which the Employee was entitled to receive payment from another employer not covered by the Agreement; or
  - 1.4.2. for which the Employee has already received payment from the Employer (either in the form of paid leave or payment in lieu).
- 1.5. Despite this, subject to the recognition of service requirements outlined in clause 54 of the Agreement, these periods may be counted towards the Employee's period of continuous service for the purpose of future accruals.

## **2. Accrual of Long Service Leave during periods where an employee is in receipt of Workers Compensation payments**

- 2.1 Under clause 54 of the Agreement, the accrual of long service leave during a compensation period is limited to the first 12 months of a compensation period.

## **3. Accrual of Long Service Leave during periods of unpaid parental leave**

- 3.1 Notwithstanding clause 54.9(c)(ii) of the Agreement, from 1 January 2019 long service leave will accrue during the first 52 weeks of unpaid parental leave.
- 3.2 Any unpaid parental leave which extends beyond the first 52 weeks, will not count as service for the long service leave purposes but will not break continuity.

- 3.3 Where an Employee is on unpaid parental leave for a period which includes or extends beyond 1 January 2019, long service leave will only accrue in respect of the component of the unpaid parental leave falling on and after 1 January 2019.

#### **4. Continuous service**

- 4.1 An Employee can access their accrued Long Service Leave after seven years of paid continuous service. The period of continuous service is calculated from start date with the Employer or the start date of other recognised service under clause 54.9 of the Agreement.
- 4.2 From the commencement of the *Long Service Leave Act 2018*, continuous service for casual and seasonal Employees, is considered as service within the coverage of the Agreement where there is no more than a 12 week break between each engagement. Employment will still be considered continuous where there is a period of absence of more than 12 weeks between two instances of employment, however only where the length of the absence is due to:
- 4.2.1. An agreement reached between the casual and seasonal Employee and Employer prior to the commencement of the absence;
  - 4.2.2. The terms of the engagement of the Employee by the Employer;
  - 4.2.3. The absence is caused by seasonal factors (for example, where work is only available in particular seasons); or
  - 4.2.4. The Employee has been employed by the Employer on a regular and systematic basis and the Employee has a reasonable expectation of being re-engaged by the Employer.
- 4.3 The calculation of the proportionate leave entitlement owing to a casual Employee is based on days worked. Gaps in eligible service which do not break continuity do not count as service.

#### **5. Taking Long Service Leave**

- 5.1 Employees should make written application for approval of Long Service Leave prior to the requested leave date. An Employee should provide as much notice as possible of their request to take Long Service Leave.
- 5.1.1. It is recommended the application should include details of any request to take the leave at a different fraction to that currently worked, payment in advance of the leave, leave at half pay and/or an election to replace any unpaid parental leave with Long Service Leave. Employees should refer to their Department or Agencies intranet for specific application arrangements.
- 5.2 Consistent with clause 51.18 of the Agreement, an Employee may in lieu or in conjunction with parental leave, access any Long Service Leave entitlements, which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under clause 51.20(b) of the Agreement.

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- 5.3 The Employer may refuse a leave request for operational reasons. In this case alternative acceptable dates should be negotiated between the Employer and Employee.
  - 5.4 Both the *Fair Work Act 2009* and the Agreement do not allow for Long Service Leave to be cashed out.
  - 5.5 An Employee will be paid in lieu of any accrued Long Service Leave entitlement on cessation of employment.

## **6. Other forms of leave during periods of Long Service Leave**

- 6.1 Where an Employee is on a period of paid Long Service Leave and an entitlement to Personal/Carer's Leave (clause 47) or Compassionate Leave (clause 50) or Cultural and Ceremonial Leave (clause 53) arises, the Employee may request that they be granted that other form of leave and re-credited their Long Service Leave.
- 6.2 An application to substitute leave must include documentary evidence as required by the Agreement.
- 6.3 If the application is granted, the applicable long service leave amount will be re-credited, and the Employee will access their accrual of Personal/Carer's Leave or Compassionate Leave or Cultural and Ceremonial Leave.

## **7. Communication with Employees whilst on Long Service Leave**

- 7.1 Reasonable steps are to be taken to provide information to an Employee on Long Service Leave about significant industrial matters and workplace change that occur while the Employee is on Long Service Leave.

## **8. Long Service Leave entitlements on movement within or out of the coverage of the Agreement**

- 8.1 Employees who have established a Long Service Leave entitlement and who move within or outside of the coverage of the Agreement will have their accrued Long Service Leave entitlement treated as follows:

**For Employee Initiated Changes**

Description of service history	Description of entitlement
An Employee of one Victorian Public Service (VPS) Agreement covered Department or Agency moves to another VPS Agreement covered Department or Agency	All service and Long Service Leave balances/accruals will transfer to the new VPS Department or Agency (through usual transfer of personnel arrangements) provided there is no break in service. No cashing out of accrued Long Service Leave entitlements is to be made to the Employee.
An Employee of one VPS Department or Agency takes up employment with a broader Public Sector or private sector employer	As the Employee will cease to be covered by the Agreement, any accrued entitlements owing to the Employee under the Agreement are paid out on cessation (unless otherwise agreed between the current and new organisation that the equivalent money and leave entitlement is to be transferred to the new organisation). Future accruals and recognition of prior service arrangements will be determined by the employment arrangements covering the new Employer.
An Employee of one VPS Agreement covered Department or Agency ceases employment and future employer is unknown	Any accrued entitlements owing to the Employee are paid out by the VPS Department or Agency on cessation.  In the event that the Employee recommences with a VPS Department or Agency within the allowable break in recognised service provided by the Agreement (see clause 54.9(c)), the Employee's prior service may be recognised for the purposes of determining their period of continuous service and accrued Long Service Leave. Any previous entitlements to Long Service Leave cashed out are counted towards a person's period of continuous service for the purposes of future accruals but any accruals cashed out on the earlier cessation of employment are not reinstated.
An Employee of a broader Victorian or Commonwealth Public-Sector or Victorian Local Government employer or recognisable entity under clause 54.9 of the VPS Agreement takes up employment with a VPS Agreement covered Department or Agency	Service with a recognised entity under clause 54.9 is treated as if the service was performed in the VPS for the purposes of calculating future accruals under the Agreement.  Any entitlement owing to the person from their previous employment is cashed out on cessation by the previous employer (unless otherwise agreed between the current and new organisation that the equivalent money and leave entitlement is to be transferred to the new organisation).  On commencement with the VPS, the Employee can commence accruing Long Service Leave as if recognised prior service was performed in VPS.

\*Note: The table assumes all continuous service requirements have been met.

8.2 An Employee who is transferring to another Department or Agency covered by the Agreement, will have their accrued Long Service Leave entitlements transferred to their new Department or Agency through the Transfer of Personnel (TOP) process unless there is a break in service. An Employee appointed to a role with a new Department or Agency covered by the Agreement must advise the Employer prior to ceasing with their

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current Department and Agency so appropriate arrangements can be made to transfer the Employee's service and accrued leave entitlement to their new Department or Agency. Unless advised any accrued Long Service Leave entitlements owing to the Employee will be paid to them on cessation.

## **9. Prior recognised service**

- 9.1 An Employee may have prior service recognised in accordance with clause 54.9 of the Agreement. An application for the recognition of prior service should be made within six months of the Employees' starting date in the VPS. The Employer will take reasonable steps within this period to ascertain from the Employee whether the Employee has prior service.
- 9.2 The Employee should provide all relevant details of their previous employers to allow their new Employer to verify the service is recognisable under clause 54.9 of the Agreement. This should include any leave affecting service (such as leave without pay) and changes to employment type (i.e. full-time, part-time, casual) with the previous employer.
- 9.3 In calculating an Employee's eligible prior service, Employer's should be mindful that from 1 January 2019, notwithstanding clause 54.9(c)(ii) of the Agreement, the Government has determined that the first 52 weeks of an Employee's unpaid parental leave will count as service (see subsection 3 of this policy for further details).
- 9.4 Clause 54.9 of the Agreement sets out the requirements for recognition of prior service. These requirements are to be used to determine whether an Employee's service is recognisable for the purposes of Long Service Leave and will apply regardless of whether that service was or was not recognised by the Employee's previous employer. The transfer of monies between different Employers, including between Employers covered by the Agreement, is not a determining factor as to whether an Employee's service is recognisable under the Agreement.
- 9.5 A casual Employee who obtains either a fixed-term or ongoing position will have their prior service recognised provided continuity of service is maintained. Once a casual Employee commences in a fixed-term or ongoing position, their Long Service Leave entitlements will accrue as per the rules applying to fixed-term or ongoing Employees.
- 9.6 Service previously worked as an external contractor will not be recognised as prior service should that Employee be successful in obtaining fixed-term or an ongoing position within the VPS.
- 9.7 The Agreement does not provide for prior service to be recognised with non-government or private sector Employer, even where they are fully funded by a government organisation.

- 9.8 An Employer may enter into arrangements with each other or with other Employers not covered by the Agreement about how monies will transfer in the event that an Employee's Long Service Leave is recognised. However, these arrangements do not affect whether the Employee has an entitlement to have their prior service recognised under the Agreement or not.
- 9.9 For breaks of service greater than one year and less than two years, the following factors may be considered when deciding to approve or reject the request:
  - 9.9.1. The reason for any resignation from approved service;
  - 9.9.2. The activity undertaken during the break; and
  - 9.9.3. Any other factors pertinent to ascertaining special circumstances.
- 9.10 The Employer has discretion to approve an Employee's application for recognition of prior service where the absence of 2 years or less is due to special circumstances. Special circumstances must be due to:
  - 9.10.1. A pressing personal or domestic emergency; or
  - 9.10.2. Strain or stress deserving of compassionate considerations.
- 9.11 A request made under 8.9 or 8.10 above must be supported by documentary evidence to the satisfaction of the Employer to establish or corroborate the reason(s) for the break in service.

## Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

## Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 54 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 12 of the Agreement.

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## Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Annual Leave
- Compassionate Leave
- Parental Leave
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>