

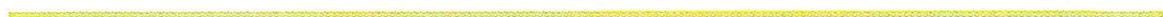


Australian Government
Australian Public Service
Commission

Long Service Leave

Participant Workbook

Prepared by HR Operations Training Program



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This training resource is current as at March 2013.

Comments and suggestions for continuous improvement of this program are encouraged and should be submitted via email to HRTraining@apsc.gov.au.

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1. Course overview

1.1 Purpose

This course will provide an in-depth view of Long Service Leave (LSL) processes using applicable legislation, employment instruments, policies and advice.

1.2 Pre-requisites

Prior to attending this course, participants are required to have completed the HR Operations Training Program course, 'Prior Service' or have previous relevant experience.

1.3 Target audience

This course is intended for human resources practitioners who will be processing requests for LSL, and related payments, or advising employees on LSL entitlements.

1.4 Duration

This course is scheduled to be delivered over one day, typically from 9 am - 5 pm.

1.5 Learning objectives

At the end of the course, participants will be able to:

- Determine employee LSL accrual dates;
- Calculate LSL credits for part-time and casual (irregular or intermittent) service;
- Calculate payment in lieu of LSL (eg. for purposes such as redundancy, retirement and dismissal pay);
- Process employee LSL applications; and
- Provide advice to employees about their long service leave entitlements and the Long Service Leave Act.

Note: the course does not include a detailed coverage of the tax calculation for payments in lieu. This is covered in the Final Entitlements course.

1.6 Key references

The following legislation and references relate to long service leave and are referred to in this course.

- *Long Service Leave (Commonwealth Employees) Act 1976*
- *Long Service Leave (Commonwealth Employees) Regulations*
- *Public Service Act 1999*
- *Financial Management and Accountability Order 1997*
- Your Agency Enterprise Agreement
- DEWR Advice 1998/22
- DEWR Advice 1999/2

The information in this guide does not replace primary reference material.

IT IS IMPORTANT TO KNOW THE PROVISIONS THAT APPLY IN YOUR AGENCY

2. Revision

The legal authority for recognition of prior service for the purposes of LSL is the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act) and the *Long Service Leave (Commonwealth Employees) Regulations 1957* (LSL Regs).

Note: Section 10 of the LSL Act defines Government Service and Section 11 of the LSL Act defines prior service employment. Prescribed authorities (for prior service) recognisable for LSL purposes are listed in Schedules 1A, 1 and 2 of the LSL Regs.

2.1 Key elements

The key elements for determining whether prior service is to be recognised for LSL purposes are:

- Government service;
- Eligible prior service; and
- Continuity of service.

2.2 Government service

The meaning of Government service is defined by section 10 of the LSL Act. It includes employment in the Commonwealth under legislation or under a contract of service or apprenticeship.

The Act does not distinguish between ongoing and non-ongoing/casual employment. Full-time and part-time employment is only defined for the purposes of calculating credits.

Therefore, government service is subject to the provisions of the LSL Act regardless of employment type/status or hours of work. Note: casual employment is, for the purpose of calculations, considered part-time employment.

A person who is a public authority of the Commonwealth or is a member or deputy member of a public authority of the Commonwealth is also deemed to be employed in Government service (provided remuneration is **not** by way of fees, allowances or commission).

The Commissioner, a Deputy Commissioner of the Australian Federal Police (AFP) or an AFP employee is taken to be employed in Government Service.

APS agencies and public authorities bound by the LSL Act are required to recognise prior service with other agencies and authorities also bound by the LSL Act where the service is continuous.

Please note that section 10 of the LSL Act also excludes some employment that you might think is Government service, for example, Australian Defence Force, Judges, State / Territory Public Service or any person remunerated for that employment by way of fees, allowances or commission only. See further information about this under the section 'eligible prior service'.

2.3 Eligible prior service

Under sub-section 11(2) of the LSL Act, prior service is eligible for recognition where an employee was employed continuously in:

- any service of a State or an authority of a State;
- the public service or an authority of a Territory, including Papua New Guinea before independence;
- the teaching service of the ACT or the Northern Territory;
- other relevant service, defined as:
 - o Australian Defence Force service;
 - o employment under the Reserve Bank Act 1959 or the Commonwealth Banks Act 1959;
or
 - o service as a locally engaged employee (refer to sub-section 11(5) of the LSL Act);
and/or
- other organisations prescribed under sub-section 7(2) of the LSL regulations.

Employees in these organisations may be subject to their own LSL legislation (or scheme) and, on commencement with a LSL Act agency, LSL credits are not automatically carried across. Instead, any eligible prior service is treated as though it is the same as Commonwealth service and the LSL credit is calculated accordingly (that is at the same rate as LSL Act entitlements, not the rate that was accrued under the previous scheme).

Under sub-section 11(4) of the LSL Act, service in an honorary capacity, or service remunerated by way of fees, allowances or commissions only is not recognised as prior service.

2.4 Continuity of service

Section 12 of the LSL Act defines continuous service to mean period/s of qualifying service that does not have any break in employment that **exceeds 12 months**. The period of any break, itself, is not considered as service. There is no discretion under the Act to extend the 12 month period.

2.5 Breaks in service and accrual dates

The following are considered breaks in service and have the effect of deferring the LSL accrual date:

- between cessation and commencement of periods of government service (section 10 LSL Act); and
- between cessation and commencement of periods of eligible employment (section 11 LSL Act).

Where an employee has broken periods of eligible service, service counts only if the break is *no more than 12 months* see section 12 of the LSL Act. Note: The maximum 12 month period applies even though the last day on which an employee could have commenced, or recommenced, employment was a weekend or a public holiday. *A break of exactly 12 months does not break continuity.* The period of any break is not recognised as service itself.

Example 1	
7.12.98 to 7.12.12	Department of Defence
7.3.13	Commences in your agency
<p><i>Continuity is not broken for the purpose of the LSL Act even though the employee was unemployed between ceasing with the Department of Defence on 7.12.12 and commencing with your agency on 7.3.13. This is because the break between the two dates is 89 calendar days, well within the 12 month limit.</i></p> <p><i>Note: when counting the days between cessation and commencement, the first day you count is the day after the cessation date and the last day you count is the day before the commencement date. In the example above, day 1 would be 8.12.12 and day 89 is 6.3.13.</i></p>	

2.6 Exercise 1

Exercise 1	
Ms Brown has commenced in your agency with the following service:	
8.12.03 to 7.12.12	Department of Climate Change
7.3.13	Commences in your agency
<p><i>What is the LSL accrual date?</i></p>	

2.7 Leave counting as service for LSL

If an employee takes approved leave during a period of employment, this is **not** considered to be a 'break in service'. Continuity of service is not broken by periods of leave with pay, part pay or without pay. However, leave not to count as service, defers the accrual date of LSL.

In accordance with section 12 of the LSL Act, the following types of leave count as service for LSL purposes:

- Any leave with pay or part pay (note Maternity Leave 'on half pay' is actually paid leave and LWOP with an administrative arrangement in place to spread payment, not leave on part pay);
- LWOP on account of illness; and
- LWOP in respect of a period for specified defence service (section 12(10) of the LSL Act).

LWOP (excepting for illness, defence service or to occupy an executive office) **does not** count as service for the purposes of LSL **unless**:

- an agency head or the person who granted the LWOP determined (otherwise than under this Act), either at the time of the grant or at a later time, that the period of absence be included in the person's period of service for the purpose of the granting of LSL; or
- the approving authority determines under this Act that the period of absence be included in the period of service for the purposes of this Act.

LWOP granted for the purposes of undertaking full-time union duties, as defined in section 12(11) of the LSL Act and LSL Regulation 4E, counts as service for the **qualifying periods** set out in the LSL Act, but **no credit accrues** for the period of LWOP (sub-section 12(4) of the LSL Act).

Example 2	
7.12.03 - continuing	Department of Foreign Affairs and Trade
7.3.06 – 9.3.08 - LWOP to study, travel and work throughout Asia	
<p><i>Continuity is not broken for the purpose of the LSL Act even though the employee was on LWOP that was not determined to count as service for two years from 2006 to 2008.</i></p> <p><i>The effect that this has, however, is that instead of being credited with LSL 10 years after commencement (scheduled for 6.12.13), the accrual date is deferred by the total number of calendar days of the LWOP (734 calendar days). The date of accrual will now be 10.12.15.</i></p>	

Exercise 2

Mr Green has already completed 10 years' service and has an annual accrual date, for LSL, of 1 June each year.

Mr Green took LWOP from 5 March 2013 to 28 March 2013.

1.6.12

Last accrual of LSL

5.3.13 to 28.3.13

LWOP

When will Mr Green next accrue LSL?

ALL LWOP (EXCEPT FOR ILLNESS, DEFENCE SERVICE) DEFERS THE ACCRUAL DATE, IN ACCORDANCE WITH THE LSL ACT, UNLESS THE AGENCY HEAD DETERMINES OTHERWISE ON A CASE BY CASE BASIS. THE EA PROVISION CANNOT DISPLACE THE LSL ACT PROVISION!

2.8 Transfer of funds for LSL liability

In accordance with Part 11 of the *Financial Management and Accountability Regulations 1997*, payment for leave liability is to be transferred between agencies if:

- (a) an employee in an Agency (the *old employer*) moves to another Agency, a Commonwealth authority or the High Court of Australia, (the *new employer*); and
- (b) some or all of the employee's accrued leave entitlements are transferred to the new employer as part of the employee's move; and
- (c) the move is not a direct consequence of the transfer of a government function.

Within 30 days of the receipt of a correctly rendered invoice from the new employer, the old employer must pay to the new employer an amount equal to the sum of the value, worked out on the basis of the employee's salary immediately before leaving the old employer, of:

- (a) the employee's annual leave entitlement at that time; and
- (b) the employee's *long service leave entitlement* at that time.

Note: long service leave entitlement, for an employee, means:

- (a) the period of long service leave to which the employee is legally entitled; or
- (b) if the employee is not legally entitled to any long service leave — the amount worked out by multiplying the notional amount of long service leave to which the employee is entitled for a year of service by the weighting factor set out in the following table that applies to the number of years of service the employee has completed.

Years of service	Weighting factor
Less than 1	0.5
At least 1 but less than 2	0.6
At least 2 but less than 4	0.7
At least 4 but less than 6	0.8
At least 6 but less than 8	0.9
At least 8	1.0

Where, for example, an employee has moved from one employer to another for a short period (and will be returning to the old employer), the employers may agree that it is not efficient to invoice and transfer funds under this regulation (as long as the employee will not be deprived of access to relevant leave).

Agency is defined in section 5 of the Act. It includes a Department of State, a Department of the Parliament and an Agency prescribed by the FMA Regulations.

Commonwealth authority has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

For more information, see www.finance.gov.au

Example 3	
A new employee commenced in your agency on 1 April 2013 with the following service:	
1.4.06 – 31.3.13	Department of Health
The employee would not have any LSL credits because they have not yet completed 10 years of service.	
<i>The LSL liability to be transferred would be calculated:</i>	
<i>Years x 0.3 months' LSL x weighting factor. i.e. $7 \times 0.3 \times 0.9 = 0.27$ months LSL liability</i>	
<i>The weighting factor is 0.9 because of the 7 years' service (between 6 and 8 years on the weighting factor table).</i>	

Example 4	
A new employee commenced in your agency on 1 April 2013 with more than 10 years' service and a LSL balance of 3.9 months is transferred:	
<i>The LSL liability to be transferred would be 3.9 months.</i>	

2.9 REVISION QUIZ

1. In your own words, what is 'prior service'?

2. Why is it necessary?

3. Who has responsibility for the process?

4. Who decides / approves the recognition?

5. Can it be refused (explain your answer)?

6. Who pays for the leave that is credited as a result of recognition of prior service?

3. Movement between employers

Where an employee moves (ie. with no break in service) between **Government Service employers as defined by section 10** the LSL Act, the employee **does not cease** to be an employee for the **purposes of the LSL Act**, even though they may be resigning from one agency and commencing with another.

In these circumstances employment is considered to be continuous and the employee should not be paid in lieu of LSL at the time of movement/cessation. The losing agency is required to transfer the accrued credit and associated funds to the gaining agency.

Further, on cessation, an employee may request **NOT** to be paid in lieu (s. 17(3) of the LSL Act). In this case, if there is a break in service between LSL Act employers, there may be a credit to be reinstated on commencement.

The provision for this rule is in the *Financial Management and Accountability Act 1997* for agencies covered by this Act; and is also required of many agencies covered by the *Commonwealth Authorities and Companies Act 1997*. You can find out which Act your agency is established under, by searching the Department of Finance and Deregulation website for 'FMA Act agencies' and 'CAC Act agencies'.

4. Granting LSL

The legal authority for the crediting of LSL is the *Long Service Leave (Commonwealth Employees) Act 1976* (LSL Act) and the *Long Service Leave (Commonwealth Employees) Regulations 1957* (LSL Regs).

4.1 How does LSL accrue?

LSL accrues at the rate of three tenths (3/10) of a month (0.3 of a month or 9 days) for each year of service. The rate of accrual is the same whether an employee works full-time or part-time hours. However, in the case of a part-time or casual employee, the credit is based on the number of hours worked per week, and the employee will receive the part-time rate of pay when they take LSL.

4.2 When is LSL granted?

In accordance with Section 16 of the LSL Act, an employee is not eligible to be granted LSL unless his, or her, period of service is at least 10 years. The only exceptions to this is where an employee, with at least 1 year of service, is to cease employment on attaining the minimum retiring age or is retrenched (Section 17 of the LSL Act). In these cases, the employer may grant to him or her LSL on full salary, to be taken immediately before he or she ceases.

Note: this is different to the situations in which payment in lieu of LSL can be made for employees with service of less than 10 years, which is covered later in this workbook.

4.3 Calculating LWOP NTCAS for LSL

Individual periods of LWOP NTCAS are calculated from the time the leave commences until the last day of the leave, that is, it will include weekends and non-working (i.e. non-rostered) days. Rostered Days Off (RDOs) are not counted as LWOP NTCAS.

Example 5	
Tues 26.3.13 – Thurs 11.4.13 (inclusive)	LWOP NTCAS
Tues 9.4.13	RDO
29.3.13 & 1.4.13	Public holidays
<p><i>The period of LWOP is 16 calendar days:</i></p> <p><i>17 calendar days from Tues 26.3.13 to Thurs 11.4.13, minus the 1 day RDO.</i></p> <p><i>The public holidays are not paid, nor do they reduce the days of the LWOP, because they fall within a period of LWOP NTCAS.</i></p>	

5. Calculating LSL credits

The formulae for calculating LSL credits are provided by section 18 of the LSL Act.

LSL accrues at the rate of 3/10ths (0.3) of a month (9 days) for each year of service. This rate of accrual applies to all service, whether it is part-time or full-time. Part-time LSL is discussed in a later section of this guide.

Completed years of service x 3/10 (0.3) months = months of LSL credited

Example 6		
Completed years of service	Calculation	Months of LSL credited
10	$10 \times 0.3 = 3.0$	3
15	$15 \times 0.3 = 4.5$	4.5
20	$20 \times 0.3 = 6.0$	6

Any LSL already taken or paid in lieu is deducted from the result to give the current LSL entitlement.

Example 7		
Months of LSL based on completed years	Less months of leave taken/paid in lieu	Current balance
3	0.5	2.5
4.5	0.4	4.1

Converting part months into days

For the purposes of LSL, a month is always 30 days, regardless of the actual days in the month the leave is taken.

Therefore, a quantity of a leave credit (expressed in months) is multiplied by 30 to give a result in actual calendar days.

Example 8		
Months of LSL credit	Calculation	LSL credit in months and calendar days
0.6	$0.6 \times 30 = 18.0$	18
3	$3.0 \times 30 = 90$	90
1.9	1 month and $(0.9 \times 30) = 1$ month and 27	1 month and 27 days

Converting days into months

Employees may request LSL in periods of at least 7 calendar days and short periods of leave (rather than full months at a time), or leave at half pay, are common.

Therefore, a quantity of leave (expressed in calendar days) is divided by 30 to give a result in months.

Example 9		
Calendar days requested	Calculation	Months deducted
15	$15 \div 30 = 0.5$	0.5
21	$21 \div 30 = 0.7$	0.7
1 month and 7 days	1 month and $(7 \div 30 = 0.2333)$	1.2333

5.1 Exercise 3

Exercise 3

Mr White commenced in the APS on 1 March 1999, has had no periods of leave not to count as service and has taken no LSL.

Calculate his LSL balance as at 1 March 2013.

Expressed in months	
Expressed in months and days	

6. Minimum periods for taking LSL

Unlike other forms of leave, which are calculated on a working day basis, weekends and public holidays are regarded as part of the LSL period. That is, weekends, public holidays and normal working days, within the period of an application, are counted towards the total number of days of LSL deducted.

The LSL Act expresses leave in months and fractions of a month (s.4(3)). When an employee applies for one month's LSL e.g. 12 March to 11 April, this equals one month, as does 1 February to the end of February also equal one month.

Agencies should not grant LSL in patterns which would exclude weekends or public holidays from periods of LSL. The granting of leave in such patterns would unfairly advantage employees and add to the costs and LSL liabilities of agencies. The Bargaining Framework's recommended terms and conditions require that agency enterprise agreements include this condition.

Agencies should not grant LSL:

- for periods of less than seven calendar days; or
- in patterns where a period of annual leave breaks the LSL period, e.g. LSL/Annual Leave/LSL.

However, agencies can grant LSL in combination with Annual Leave in patterns provided the LSL is not split to provide such advantage. For example, Annual leave / LSL / Annual Leave / return to work.

Sub-section 6(7) of the Maternity Leave Act allows employees access to paid leave while on unpaid maternity leave. This means that any application for long service leave during a period of unpaid maternity leave must be granted, provided the applicant is eligible for the paid leave requested.

7. The use of LSL in conjunction with other leave

LSL can only be granted when a leave request is lodged by the employee. Employees do not have an automatic right to LSL being approved, except where the employee is on parental leave or maternity leave without pay.

7.1 Maternity leave / Parental leave and LSL

In accordance with section 6(7) of the *Maternity Leave (Commonwealth Employees) Act 1973*, a female employee who is on unpaid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* is entitled to access any paid leave credits to which she is entitled to and can do so in any pattern. This is the only circumstance where any type of leave pattern involving LSL will be approved that would not normally be acceptable.

Having said that, any period of LSL must still be of at least 7 days' duration.

7.2 Sick / Compassionate / Bereavement leave during LSL

The agency enterprise agreement is the authority to determine whether an employee can be granted such leave while on LSL.

If so, LSL leave should be granted in full day amounts, not part days. Where applicable, LSL should be re-credited or granted to the employee.

Example 10	
An employee on LSL:	
8.4.13 to 24.4.13	On approved LSL
23.4.13 to 30.4.13	Provided a medical certificate stating she was unfit for duty for this period (inclusive) due to a broken ankle.
The agency enterprise agreement allows for an employee to access paid personal leave while on LSL.	
Two days of LSL (23 & 24 April) would be re-credited.	
Five days of Personal leave would be deducted ie. working days in the period covered by the medical certificate noting that 25 April is a public holiday and, therefore, would not be deducted.	
Alternatively, if the supervisor agrees, the employee may remain on LSL for a further 2 days after the medical certificate expires (1 and 2 May) and return to work on 3 May 2013, rather than have the 2 days' LSL re-credited.	

8. Outside employment and LSL

Agencies should have guidelines where an employee wishes to engage in outside employment during periods of long service or other kinds of leave. A formal application for permission to do so is usually required.

9. Practical exercises

Exercise 4 Ms Violet has applied for one month of LSL starting on 1 February 2014. What is the end date of the LSL? How much LSL would be deducted?
1 February 2014 -
If she changed her mind and wanted the LSL to commence on 1 March 2014, what would the end date be? How much LSL would be deducted?
1 March 2014 -

9.1 Exercise 5

Exercise 5 Mr Black has applied for the following leave:		
Leave type	From	To
Annual leave	25 November 2013	13 December 2013
LSL	16 December 2013	24 December 2013
Annual leave	2 January 2014	3 January 2014
Is this pattern of leave acceptable? Why, or why not?		

9.2 GROUP EXERCISE

Exercise 6	
Ms Scarlett has the following service:	
1 July 1991 to 1 July 2005	Department of Agriculture, Fisheries and Forestry
1 June 1998 to 1 September 1998	LWOP NTCAS
Requests not to be paid out for remaining LSL balances on cessation from DAFF	
1 August 2005 to 1 March 2013	Bureau of Meteorology
1 January 2007 to 30 June 2007	LSL at half pay
4 March 2013	Commenced Department of Climate Change and Energy Efficiency
What is Ms Scartlett's LSL Balance on commencement?	
Balance in months:	
Balance in months and days:	
When will Ms Scarlett next be credited with LSL (next accrual date)?	

10. Part-time service and LSL

A part-time or casual employee's LSL credit is the same as a full-time employee's credit however, the rate of pay, when taking LSL, is based on the number of hours worked per week. It is the part-time rate of pay that is the amount of pay they receive when they take LSL.

If an employee has both full-time LSL credits and part-time LSL credits, they need to state which credits they want to take when applying for LSL.

Note that casual service generally attracts a salary loading in lieu of some paid leave and public holidays. It is important to check what types of paid leave the loading covers as, if LSL is included in any loadings, this is treated as payment in lieu for the purposes of the LSL Act.

An employee using periods of *both* full-time and part-time service will receive different payments for the two period of leave – one calculated for full-time service and the other for part-time service. The employee is able to choose from which credit the LSL is taken regardless of whether they are part-time or full-time at the time they take their LSL.

Any full-time LSL is taken at the current full-time rate of pay. Any LSL taken as part-time is paid on a proportional basis of current full-time salary with average weekly hours calculated as detailed in section 10.4 of this workbook.

10.1 Category A and category B employees

Under Section 4 of the LSL Act, employees with part time service are defined as either Category A or Category B employees.

- Category A employees have **all** part-time (or all full-time) service; and
- Category B employees are employees other than Category A - meaning employees with **both** full-time **and** part-time service.

Part-time credits for Category A and Category B employees accrue at the same rate as full-time credits, that is:

Completed years of service x 3/10 (or 0.3) months = months of LSL

Any LSL already taken or paid in lieu is then deducted from the result to give the current LSL entitlement.

10.2 Proportioning the LSL credit for Category B employees

The LSL credit for Category B (both full-time and part-time service) employees is proportioned into two credits: one for their full-time service; and one for their part-time service.

To calculate the total LSL credit:

- Calculate the total length of service;
- If the part-time service is the most recent, calculate the full-time service first, then the part-time; and
- If the full-time service is the most recent, calculate the part-time service first, then the full time.

Note: Where the part-month of service is less than 15 days, round the service DOWN. Where the part-month is 15 days or more, round the service UP, to make a complete month. Where the part-month is 15 days at a part-time rate, round DOWN.

Example 11			
Service type	Dates	Hours / week	Total service
Part-time	1 July 1996 to 30 September 2004	20	8 years & 3 months
Full-time	1 October 2004 to 31 March 2013	N/A	8 years & 6 months
TOTAL SERVICE (1 July 1996 – 31 March 2013)			16 years & 9 months
Calculate completed service			
<i>Completed service from 1 July 1996 to 30 June 2012 is 16 years.</i>			
Calculate LSL entitlement			
<i>LSL entitlement is $16 \times 0.3 = 4.8$ months LSL (or 4 months and 24 days).</i>			
Calculate proportion of completed service that is part-time (the service that falls first)			
<i>Subtract the rounded part-time service from the total service for LSL:</i>			
<i>16 years less 8 years and 3 months of part-time service = 7 years and 9 months.</i>			
<i>Note: if part-time service falls last, subtract the rounded full-time service from the total completed service:</i>			
Part-time service (of 16 yrs completed svc)		Part-time service (of 16 yrs completed svc)	
8 years and 3 months or 8.25 years		7 years and 9 months or 7.75 years	
Calculate part-time LSL credit			
<i>8 years and 3 months (8 and 3/12 or 8.25) $\times 0.3 = 2.475$ months of part-time LSL.</i>			
Calculate full-time LSL credit			
<i>7 years and 9 months (7 and 9/12 or 7.75) $\times 0.3 = 2.325$ months of full-time LSL.</i>			
Check total credit			
<i>2.475 + 2.325 = 4.8 months</i>			

Example 12			
Type	Dates	Hours/week	Total service
Full-time	8 July 1999 to 12 August 2004	f/t	5 years, 1 month & 5 days
Part-time	13 August 2004 to 31 March 2013	22	8 years, 7 months & 20 days
TOTAL SERVICE (8 July 1999 – 31 March 2013)			13 years, 8 months & 25 days
Calculate completed service			
<i>Completed service from 8 July 1996 to 7 July 2012 is 13 years.</i>			
Calculate LSL entitlement			
<i>LSL entitlement is $13 \times 0.3 = 3.9$ months LSL (or 3 months and 27 days).</i>			
Calculate proportion of completed service that is full-time (the service that falls first)			
<i>Subtract the rounded full-time service from the total service for LSL:</i>			
<i>13 years less 5 years and 1 month (round part month down (5 days)) of full-time service</i>			
<i>= 7 years and 11 months.</i>			
<i>Note: if full-time service falls last, subtract the rounded part-time service from the total completed service:</i>			
Full-time service (of 13 yrs completed svc)		Full-time service (of 13 yrs completed svc)	
5 years and 1 month or 5.08 years		7 years and 11 months or 7.92 years	
Check 5 years and 1 month + 7 years and 11 months = 13 years or			
5.08 years + 7.92 years = 13 years			
Calculate full-time LSL credit			
<i>5 years and 1 month (5 and 1/12 or 5.08) $\times 0.3 = 1.524$ months of full-time LSL.</i>			
Calculate part-time LSL credit			
<i>7 years and 11 months (7 and 11/12 or 7.92) $\times 0.3 = 2.376$ months of part-time LSL.</i>			
Check total credit			
<i>1.524 + 2.376 = 3.9 months (3 months and (0.9 x 30) 27 days) or (3.9 x 30 = 117 days)</i>			

10.3 Exercise 7

Exercise 7		
Ms Cerise has the following service:		
Type	Hours per week	Dates
Part-time	20	1 August 2002 to 31 August 2008
Full-time	N/A	1 September 2008 to 31 March 2013
Calculate Ms Cerise's total service:		
Calculate Ms Cerise's completed years of service:		
Calculate Ms Cerise's LSL entitlement (based on completed years):		
Calculate the proportion of part-time service (of completed years):		
Calculate Ms Cerise's part-time credit:		
Calculate the proportion of full-time service (of completed years):		
Calculate Ms Cerise's full-time credit:		

10.4 Averaging hours for payment during part-time LSL

At the time a Category A or Category B employee takes their part-time LSL, payment is made at the greater of:

- the average of the hours per week worked over the whole period of part-time service; or
- the average of the hours per week worked in the last 12 months of part-time service.

Note: the LSL Act (Sect 20(4), definition of *relevant period* part(b)) defines the period for this calculation as ‘the period ... before the day on which the leave commences’.

There is no provision under the LSL Act to convert part-time credits for full-time credits, or vice-versa.

For current part-time employees the salary used is the current full-time salary, proportioned to reflect the part-time rate.

Section 20 of the LSL Act refers to the rate of salary to be paid during LSL.

Example 13

Calculate the average weekly hours on which to base payment while on LSL for an employee who has the following service:

Dates	Time period	Hours per week
1 April 2001 to 31 March 2004	3 years	26
1 April 2004 to 31 March 2013	9 years	20

What is the employee's average weekly hours for LSL purposes?

Step 1 – calculate the number of calendar days worked for each period of service:

3 years @ 26 hours per week	1106
9 years @ 20 hours per week	3307

Step 2 – convert the days to weeks:

Service	Calendar days	Calculation (days ÷ 7)	Total weeks
3 years	1106	$1106 \div 7$	158
9 years	3307	$3307 \div 7$	472.43
TOTAL			630.43

Step 3 – Calculate total hours:

Hrs/week	Weeks	Calculation (weeks x hrs/week)	Total hours
26	158	158×26	4108
20	472.43	472.43×20	9,448.6
TOTAL			13,556.6

Step 4 – Calculate average hours per week:

Total hrs	Total weeks	Calculation (total hrs ÷ total weeks)	Average hrs per week
13,556.6	630.43	$13,556 \div 630.43$	21.5

Step 5 – Calculate average hours per week over the last 12 months:

The employee has worked **20** hours per week over the last 12 months of part-time service.

Step 6 – Determine which is greater, average over the whole period or average over the last 12 months of part-time service:

Average hrs/week over whole period	Average hrs/week over last 12 mths
21.5	20

Final answer

So, payment is made for LSL (part-time hours) based on 21.5 hours per week.

Example 14

A Category B employee has both full-time LSL credits and part-time LSL credits. They have applied for 4 months' LSL from 1 April 2013 to 31 July 2013, and have applied to use all available full-time credits first. They have the following service:

	Dates	Hours per week	Time period	Total days	Weeks (days ÷ 7)	Total hours (weeks x hrs / wk)	
Full-time service	16.11.98 to 31.12.06	Full / time	8 years 1 month 15 days	2968	-	-	
	Total full-time			8 years, 1 month and 15 days			
Part-time service	1.1.07 to 31.12.07	22.05	1 year	365	52.14	1149.69	
	1.1.08 to 30.6.08	29.4	6 mths	182	26	764.4	
	1.7.08 to 31.12.09	22.05	1 year 6 mths	549	78.43	1729.38	
	1.1.10 to 31.12.12	29.4	3 years	1096	156.57	4603.16	
	1.1.13 to 31.3.13	24	3 mths	90	12.86	308.64	
	Sub totals - part-time			6 years 3 mths	2282	326	8555.27
TOTAL SERVICE (full-time & part-time)			14 years & 4 months and 15 days (total completed svc is 14 years – 16.11.98 – 15.11.13)				
Average weekly hours							
Total p/t service	1.1.07 to 31.3.13		Time period	Total days	Weeks (days ÷ 7)	Total hours (weeks x hrs / wk)	
			6 years 3 mths	2282	326	8555.27	
Average weekly hours (total hours ÷ total weeks)				8555.27 ÷ 326		26.24	
Last 12 months	1.4.12 to 31.12.12	29.4	9 mths	275	39.29	1155.13	
	1.1.13 to 31.3.13	24	3 mths	90	12.86	308.64	
	Sub totals			1 year	365	52.15	1463.77
	Average weekly hours (total hours ÷ total weeks)				1463.77 ÷ 52.15		28.07

Total service for LSL purposes		14 years of completed total service	
The part-time service falls last, therefore, calculate and round the full-time service first.			
Full-time service	8 years, 1 month and 15 days	Rounded up to completed months: 8 years and 2 months of completed full-time service	Full-time LSL credit is: 8 and 2/12 years (or 8.1667) x 0.3 = 2.45 months or 2 months and 13.5 days
Part-time service	To calculate the duration of part-time service, subtract the rounded full-time completed service from the total completed service	14 years of completed total service – 8 years and 2 months completed full-time service = 5 years and 10 months of completed part-time service	Part-time LSL credit is: 5 and 10/12 years (or 5.8333) x 0.3 = 1.75 months or 1 month and 22.5 days
Check	Full-time – 2.45 months or 2 months and 13.5 days or 73.5 days + Part-time – 1.75 months or 1 month and 22.5 days or 52.5 days = Total – 4.2 months or 4 months and 6 days or 126 days Compared with: 14 completed years – 14 x 0.3 = 4.2 months or 4 months and 6 days		
LSL applied for: 1 April 2013 – 31 July 2013 (4 months)			
Full-time credits: 2.45 months or 2 months and 13.5 days		1 April 2013 to half of 13 June 2013 (2.45 months or 2 months, 13.5 days), paid at the full-time rate.	
Part-time credits: 1.75 months or 1 month and 22.5 days		Half of 13 June to 31 July 2013 (1.6833 months or 1 month, 20.5 days), paid at the greater of the 2 part-time rates which is over the last 12 months – 28.07 average weekly hours.	
<p>While on LSL, even while using the full-time LSL, the employee is still a part-time employee for the purposes of leave accrual, as long as the part-time agreement continues. Similarly, accruals are at the current rate of 28.07 hours per week (the amount of the current part-time work arrangement).</p> <p>Remaining balance after LSL would be 0.0667 months (or 2 days) part-time LSL:</p> <p>2.45 months' full-time + 1.6833 months' part-time = 4.1333 months' LSL taken</p> <p>All of the full-time credit has been exhausted.</p> <p>Of the 1.75 months' part-time credit, 1.6833 months' LSL has been taken: (1.75 – 1.6833 = 0.0667) so, 0.0667 months remains; or 0.0667 x 30 = 2.001 days' LSL</p>			

10.5 Exercise 8

If an employee took LSL, or was paid in lieu, in their eligible prior employment, they are still able to have that service recognised for qualifying service under the LSL Act, but their credits are to be adjusted accordingly. Note that some employment eligible for recognition of prior service may have attracted a salary loading in lieu of LSL. This is treated as payment in lieu for the purposes of the LSL Act.

The LSL Act does not allow employees with recognised prior service to buy back any LSL taken or paid in lieu.

Exercise 8			
Mr Grey is a category A employee with the following service:			
Dates	Time period	Hours per week	
1.4.2000 to 31.3.2008	8 years	30	
1.4.2008 to 31.3.2013	5 years	25	
What is Mr Grey's average weekly hours for part-time LSL credits?			
Step 1 – calculate the number of calendar days worked for each period of service:			
8 years @ 30 hours per week		2922	
5 years @ 25 hours per week		1826	
Step 2 – convert the days to weeks:			
Service	Calendar days	Calculation (days ÷ 7)	Total weeks
8 years @ 30 hrs/week	2922		
5 years @ 25 hrs/week	1826		
TOTAL			
Step 3 – Calculate total hours:			
Service hrs/week	Weeks	Calculation (weeks x hrs/week)	Total hours
8 years @ 30 hrs/week			
5 years @ 25 hrs/week			
TOTAL			
Step 4 – Calculate average hours per week over the entire part-time service:			
Total hrs	Total weeks	Calculation (total hrs ÷ total weeks)	Average hrs per week
Step 5 – Calculate average hours per week over the last 12 months:			
Over the last 12 months of part-time service, Mr Grey has worked average hours of: _____			
Step 6 – Determine which is greater, average over the whole period or average over the last 12 months of part-time service:			
Average hrs/week over whole period		Average hrs/week over last 12 mths	
Final answer			
So, payment is made for LSL (part-time hours) based on: _____ hours per week.			

11. Casual (irregular or intermittent) service and LSL

Employees who are called upon at irregular intervals to perform short periods of duty for an organisation are able to accrue LSL credits provided that any break in employment is not more than 12 months. For such employees, service for LSL purposes is calculated as follows:

- Full-time service – isolated periods of full-time service for one or more weeks are added together; and
- Part-time service — each isolated period of service which is less than the prescribed full-time hours per week is regarded as one week's part-time service and these weeks of service are added together.
- Add these weeks of service together (A + B) to determine a total number of weeks.

The service expressed in weeks is then converted to years, months and days by the following formula:

$$\frac{(\text{Total weeks} \times 7)}{30}$$

That is: by multiplying the total expressed in weeks by seven gives a total in days.

Dividing this total expressed in days by 30 gives a total in months and part months.

To convert the months to years, months and days, take each 12 months as 1 year and each 30 days as 1 month leaving a remainder of days.

Example 15

An employee has the following periods of casual service:

Date	Duration	Type
27.6.11 to 30.6.11	4 days (regarded as one week)	B
12.9.11 to 21.12.12	68 weeks	A
28.1.13 to 8.2.13	2 weeks	A
25.2.13 to 28.2.13	3 days (regarded as one week)	B
11.3.13 to 29.3.13	3 weeks	A
<ul style="list-style-type: none"> Add the separate periods of at least 1 week (A): $68 + 2 + 3 = 73$ weeks Add the separate periods that are less than 1 week (B): $1 + 1 = 2$ weeks Add these weeks of service together (A + B) to calculate total weeks: $73 + 2 = 75$ weeks total part-time irregular service 		
Convert total weeks to days (total weeks x 7)	75×7	525 days
Express total days in months and days (total days ÷ 30)	$525 \div 30$	$(17.5) = 17$ months and 15 days
Express total in years, months and part months	1 year, 5.5 months (15 days)	

11.1 Case study

Case Study 1			
Ms Silver wants to take LSL in November 2014 and has the following employment and leave history:			
6.10.03	Commenced in APS employment		
5.10.13	LSL scheduled to accrue (commencement date plus 10 years)		
26.5.10 to 12.11.10 (171 calendar days)	LWOP NTCAS		
25 March 2014 (5.10.13 + 171 calendar days)	New LSL accrual date (scheduled date plus LWOP NTCAS)		
Ms Silver has prior service with the Australian Defence Force, as a casual employee working only during the school holidays, as follows:			
8.1.01 to 5.10.03	Total period		
Breakdown of ADF casual service:			
Periods of service	Days per week	Hours per day	Weeks
8.1.01 – 2.2.01	3	5	4 (A)
9.4.01 – 20.4.01	4	5	2 (A)
2.7.01 – 13.7.01	3	4	2 (A)
17.9.01 – 5.10.01	3	4	3 (A)
7.1.02 – 25.1.02	5	5	3 (A)
8.4.02 – 19.4.02	4	4	2 (A)
24.6.02 – 5.7.02	3	4	2 (A)
16.9.02 – 20.9.02	4	4	1 (B)
6.1.03 – 24.1.03	4	4	3 (A)
7.4.03 – 18.4.03	4	4	2(A)
30.6.0 - 18.7.03	3	4	3 (A)
22.9.03 – 3.10.03	3	4	2 (A)
Total (add A (29) and B (1))			30

Step 1 – calculate period of service		Total casual service in weeks	30
Convert total weeks to days (total weeks x 7)		30 x 7	210 days
Express total days in months and days (total days ÷ 30)		210 ÷ 30	7 months
Step 2 – Calculate new LSL accrual date, taking into account prior service			
LSL accrual date before taking into account prior service	Commencement date (6.10.03) + 10 years = 5.10.13 + LWOP NTCAS (171 days)		25.3.14
LSL accrual date accounting for prior service	25.3.14 less the casual service (210 days) – brings the date forward to account for casual service		27.8.13
On 27.8.13, Ms Silver will be credited with LSL which will be 3 months (10 x 0.3). However, some of the LSL will be full-time credit and some will be part-time credit.			
Step 3 – Calculate the proportions of full-time service and part-time service (of total service in completed years):			
To work out the proportion of full-time and part-time service, the part-time service is rounded down to completed months then subtracted from the total service (completed years).			
10 years less 7 months part-time (casual) service		9 years and 5 months	
Step 4 – Calculate the part-time LSL credit			
Part-time LSL credit is: 7 months - 7/12 of a year or 0.5833 years. Multiply the part-time service duration by the full credit for a year (0.3) to determine the credit for the 7 months: 0.5833 x 0.3 = 0.175 of a month. Convert to days: 0.175 of one month (or 30 days): (0.175 x 30) = 5.25 days.			
<p>Summary of part-time</p> <p>Of Ms Silver's 10 years' service, 7 months is part-time service attracting part-time payment when taking (or being paid in lieu for) any LSL attributed to that service.</p> <p>The 7 months' part-time service means that, of the 3 months' LSL credited at 10 years, 0.175 months or 5.25 days is part-time credit.</p>			

Average hours per week over the whole period of part-time (casual) service:

Date span	Actual days worked	Weeks (days ÷ 7)	Hours per week	Total hours (weeks x hrs/week)
8.1.01 – 2.2.01	19	2.7143	15	(2.7143 x 15) = 40.7145
9.4.01 – 20.4.01	12	1.7143	20	(1.7143 x 20) = 34.2860
2.7.01 – 13.7.01	12	1.7143	12	(1.7143 x 12) = 20.5716
17.9.01 – 5.10.01	19	2.7143	12	(2.7143 x 12) = 32.5716
7.1.02 – 25.1.02	19	2.7143	25	(2.7143 x 25) = 67.8575
8.4.02 – 21.4.02	14	2.000	16	(2.000 x 16) = 32.0000
24.6.02 – 5.7.02	12	1.7143	12	(1.7143 x 12) = 20.5716
16.9.02 – 22.9.02	7	1.000	16	(1.000 x 16) = 16.0000
6.1.03 – 26.1.03	21	3.000	16	(3.000 x 16) = 48.0000
7.4.03 – 18.4.03	12	1.7143	16	(1.7143 x 16) = 27.4288
30.6.03 – 18.7.03	19	2.7143	12	(2.7143 x 12) = 32.5716
22.9.03 – 3.10.03	12	1.7143	12	(1.7143 x 12) = 20.5716
Totals		25.4287	-	393.1448

Divide the total hours by the total number of weeks:

$393.1448 \div 25.4287 = 15.4607$ hours or 15 hours and 28 minutes ($0.4607 \times 60 = 27.642$, round up to 28 mins).

Average hours of the whole period is: 15 hours and 28 mins

Step 5 – Calculate the full-time LSL credit

Full-time LSL credit is: 9 years and 5 months – $9 + 5/12$ of a year (or 0.4167) = 9.4167 years.

Multiply the full-time service duration by the full credit for a year (0.3) to determine the credit for the 9 years and 5 months:

$9.4167 \times 0.3 = 2.825$ months.

Convert to months and days: 2 months + 0.825 of one month, or 30 days is

$(0.825 \times 30 = 24.75) = 2$ months and 24.75 days.

Summary of full-time

Of Ms Silver's 10 years' service, 9 years and 5 months is full-time service attracting full-time payment whilst on LSL, or when paid in lieu.

The 9 years and 5 months' part-time service means that, of the 3 months' LSL credited at 10 years, 2 months and 24.75 days is full-time credit.

Step 6 – Check

Part-time credit is 5.25 days and full-time credit is 2 months and 24.75 days. This should add up to 3 months, being the total credit for 10 years' service.

2 months and 24.75 days + 5.25 = 2 months and 30 days or 3 months (30 days is a month).

Step 7 – Averaging the hours for payment during part-time LSL

At the time a Category A or Category B employee takes their part-time LSL, payment is made at the greater of:

- The average of the hours per week worked over the whole period of that part-time service; or
- The average of the hours per week worked in the last 12 months of part-time service.

Average hours per week over the last 12 months of part-time (casual) service:

Date	Days	Weeks (days ÷ 7)	Hours per week	Total hours (weeks x hrs/week)
3.10.02 – 5.1.03 – 0 hours (did not work)	21	3.000	16	(3.000 x 16) = 48.0000
6.1.03 – 26.1.03				
7.4.03 – 18.4.03	12	1.7143	16	(1.7143 x 16) = 27.4288
30.6.03 – 18.7.03	19	2.7143	12	(2.7143 x 12) = 32.5716
22.9.03 – 3.10.03	12	1.7143	12	(1.7143 x 12) = 20.5716
Totals		9.1429	-	128.572

Divide the total hours by the total number of weeks:

$128.572 \div 9.1429 = 14.0625$ hours or 14 hours + (0.0625 x 60 = 3.75, round up to 4 minutes).

Average hours over the last 12 months of part-time (casual) service is: 14 hours and 4 mins

Step 4 – Identify the greater of the average hours

Average hours of the whole period is: **15 hours and 28 mins**

Average hours over the last 12 months of part-time (casual) service is: **14 hours and 4 mins**

Final answer

*The greater of the average hours is **15 hours and 28 minutes** so the average of Mr Silver's entire period of part-time (casual) service will be used to determine the rate of pay for part-time LSL credits.*

12. Salary and allowances of employees on LSL

In accordance with section 20 of the LSL Act, calculating the salary of an employee on LSL depends on whether the employee has worked in a full-time or part-time capacity throughout his or her career. If the employee has worked part-time, it will also depend on whether the employee's hours have varied during that part time service.

(a) if the employee has been employed in a **full-time capacity** throughout their period of service their current full time salary is payable during LSL.

(b) if the employee has been employed in a **part-time capacity** throughout their period of service and there has been no change in the number of hours per week their normal part time salary is payable during LSL.

(c) if the employee has been employed in a **part-time capacity** throughout his or her period of service **but there has been a change during that period in the number of hours per week** the payable salary during LSL is the greater of:

- the average of the hours per week worked over the whole period of part-time service; or
- the average of the hours per week worked in the last 12 months of part-time service.

If an employee elects to take LSL on half salary, the salary payable will then be halved.

12.1 LSL and higher duties allowance (HDA)

Under LSL Regulation 4B, HDA is payable during LSL provided:

- the employee was receiving HDA immediately before going on LSL, and
- the delegate certifies that the employee would have continued to act in a higher position but for going on LSL.

The LSL Regulations state that higher duties allowance is ‘an allowance payable to a person in respect of the performance of the duties of an office having a higher classification than his own’. This would include comparable allowances provided for in enterprise agreements, even if the terminology is different – e.g., temporary re-assignment allowance or temporary performance loading.

Example 16	
An employee has the following details:	
7.4.13 to 28.9.13	In receipt of HDA
13.8.13 to 22.8.13	LSL application
<i>HDA will be payable for the duration of LSL because the employee will be in receipt of the allowance immediately prior to LSL and, it would have been payable if they were not on leave.</i>	

12.2 HDA and payment in lieu

In accordance with LSL Regulation 4B, HDA is included in salary for the purposes of payment in lieu of LSL, provided the employee has acted in one or a number of higher positions for a continuous period of at least 12 months immediately before cessation.

If they were acting continuously, but at different levels, during the period of 12 months or more, the rate included in salary is lowest of those levels.

Example 17	
An employee retired on 12 April 2013 with the following HDA record:	
5.7.11 to 4.9.12	HDA EL1
5.9.12 to 12.4.13	HDA EL2
<i>Because the employee has been continuously in receipt of HDA for a period of 12 months or more immediately prior to cessation, HDA is included in salary for the purposes of payment in lieu of LSL at the EL1 rate.</i>	
<i>Had the employee retired on 1 September 2012, HDA would be included in salary at the EL1 rate.</i>	

12.3 LSL and other allowances

Regulations under section 8 and 8A of the LSL Act set out those allowances that are included in salary for the purposes of the LSL Act, and those payments that are not to be included in salary for those purposes.

The following regulations list the allowances that must be included in salary for the purposes of LSL both for leave granted and payment in lieu purposes:

- Reg 4 – Emoluments¹ included in salary (certain allowances specified)
- Reg 4B – Salary to include higher duties allowance (or equivalent)
- Reg 4C – Salary to include proficiency allowance (applies only to persons employed under the Snowy Mountains Hydro-electric Power Act 1949), and
- Reg 4DB – Salary to include tool allowance.

Under Regulation 4D, district allowance is included in salary for the purpose of leave granted.

LSL Regulation 4DC provides that certain payments, including shift penalties, overtime payments, restriction allowances and on-call allowance are not to be included in salary for the purposes of LSL.

12.4 Prepayments over two financial years

If an employee has requested a prepayment of leave, and this is approved, you should note that there are important tax implications if the prepayment is made over two financial years, as tax is assessed when income is **received**, not when it is earned.

For example, if a salary advance is paid in June (pay 26 or 27 or prior) and includes salary for the month of July (pay 1 onwards), the net salary which would have normally been received in the month of July, except for the prepayment request, will be added to the gross earnings on the payment summary at the end of June. The tax paid on that salary will not be on the payment summary as it will be paid in July. In these circumstances the employee could then be undertaxed.

It is important to advise employees of this tax implication if they wish to receive an advance. To avoid this, the employee could receive two advances, one at the start of their leave and the other at the start of the new financial year.

¹ Meaning of emolument - Payment.

13. Payment in lieu of LSL

Payment in lieu of any unused LSL credits is payable when an employee ceases Commonwealth employment.

Unlike when LSL is granted, payment in lieu of LSL on separation is calculated using the number of **completed years and months** of service, for example if the period of service is 16 years 9 months 5 days, completed years and months of *16 years 9 months* is counted for LSL payment in lieu purposes.

13.1 Payment for less than 10 years' service

Payment in lieu of LSL may be made to employees with less than 10 years of service, but who have at least 1 year of service if their cessation is a result of:

- age retirement;
- redundancy;
- invalidity retirement;
- death; or
- resignation due to ill health, with medical evidence stating:
 - the nature of the ill health; and
 - that the separation was due to ill health.

Where an employee with at least 12 months of service, but less than 10 years of service, ceases Commonwealth employment due to retrenchment or age retirement, they are eligible to take any pro-rata LSL which has accrued or receive payment in lieu. If pro-rata long service leave is granted as leave rather than payment in lieu, it must be taken on full pay and must expire immediately before the employee ceases employment. Refer to subsections 17(1) and 17(2) of the LSL Act.

Payment of pro-rata LSL on death

In the event of an employee's death, a pro-rata payment in lieu can be made to any dependants or the deceased's estate. Section 23 and Sub-sections 16(7) and 17(5) refer.

Payment of LSL on dismissal

Payment in lieu of LSL may be made in circumstances where an employee is dismissed by an agency:

- if on dismissal the employee has reached the minimum retiring age and has more than one year service s.17(1); or
- if on dismissal the employee has more than ten years of service, he or she is entitled to payment in lieu of LSL as provided by s.16(4).

13.2 Calculating payment for LSL in lieu

An employee may elect in writing, before ceasing, not to take a payment, or receive part-payment. This is normally because there is a likelihood that they will be commencing employment with another employer under the LSL Act or another employer is going to recognise their APS service.

Payment in lieu of LSL **cannot** be made where employees go on long term leave, move between agencies, go to a Parliamentary Service Department or go to Commonwealth statutory authorities on promotion or transfer. This is the case even if, for example, they are resigning from one agency (rather than transferring) and commencing with another agency as Commonwealth employment is considered to be continuous under the LSL Act.

The formula for calculating LSL in lieu is:

$$\frac{\text{Annual Salary}}{12} \times \text{LSL credit}$$

Example 18

An employee is ceasing with the following:

\$56,511	Annual salary
3.6 months'	LSL credit

Payment in lieu of LSL is calculated:

$$\frac{56,511}{12} \times 3.6 \text{ months} = \$16,953.30$$

13.3 Exercise 9

Exercise 9	
Mr Mint is retiring on 14.8.13. The following information is provided:	
21.7.1982	Commenced APS employment
\$89,893	Salary
LWOP NTCAS	Nil
LSL taken	Nil
How much LSL will he be paid in lieu?	
What will his gross payment be for LSL in lieu?	

13.4 Exercise 10

Exercise 10	
Ms Burgundy has resigned and her last day is 18.6.13. The following information is provided:	
19.2.75	Commenced APS employment
\$167,523	Salary
LWOP NTCAS / breaks in service	Nil
LSL taken	1 month on half pay 10.7.89 to 9.8.89
What is her LSL credit on resignation?	
What will her gross payment be for LSL in lieu?	

13.5 Taxing payment in lieu of LSL

Payment in lieu is split into three components for taxation purposes:

Service before 16 August 1978 (LSB)

Lump sum payment B (shown as B on the Payment Summary). Only 5% is taxed at the employee's marginal rate.

Service after 15 August 1978, but before 18 August 1993 (LSA)

Lump sum payment A (shown as A on the Payment Summary). Taxed at 31.5% (includes 1.5% medicare levy).

Service after 17 August 1993

Lump sum payment included in salary/wages of the Payment Summary. Taxed at the employee's marginal rate i.e. tax is calculated as if the lump sum was earned over a 12 month period.

Note The terms 'A' and 'B' above do not relate to the A and B used to distinguish combinations of full and part-time service.

Because of the complexity of the calculation of tax on unused leave payments on termination of Commonwealth employment, examples are not provided in this course but are covered in the Final Entitlements course.

Refer to the [Unused Leave Payments on Termination of Employment Tax Table - Pay As You Go \(PAYG\) Withholding Tax Table \(NAT 3351\)](#).

14. Points to consider when processing a LSL application

A LSL application should:

- Be approved by the Delegate;
- Specify whether LSL is to be on full-pay or half-pay, and whether it should come from a full or part-time credit;
- If agency arrangements allow, specify whether salary is to be paid in advance, and give sufficient notice for the prepayment;
- Be entered on the agency's HR System and filed according to agency procedures, including details of the LSL application and a copy of the form (checking disposal or archive schedule); and
- Resubmitted to check that the employee has actually returned to duty at the end of the LSL.

Note: Employees who are separating from the Commonwealth do not have to apply for payment in lieu of LSL: the LSL monies **must** be automatically paid, if the employee qualifies. Under Sub-sections 16(5) or 17(4) of the LSL Act they may opt, in writing, not to be paid out.

When processing the application, be mindful that:

- The period of service for LSL is calculated based on the number of completed years of service. For example, a period of service from 1.2.2000 to 15.4.2013 (13 years 2 months 15 days service) counts as 13 years' service for LSL purposes.
- The only limit on the amount of LSL that can be granted is the credit available (completed years).
- LSL is granted in calendar months (and part months). For example, if one month of LSL starts on 1 July, it will end on the last day of July; if it started on 16 March, it ends close of business 15 April. A period of approved LSL is first defined by calendar month/s then the additional part-month is counted. For example, a leave application for the period 22 April 2013 to 28 June 2013 is considered: 2 months from 22 April 2013 to 21 June 2013 and then the 7 days from 22 June 2013 to 28 June 2013 (inclusive) are expressed as part of a month ($7 \div 30 = 0.233333$), resulting in 2.2333 months being deducted from the LSL balance.
- When calculating fractions of a month, one month equals 30 days.
- The LSL credit and hourly rates of pay are rounded to the nearest 4 decimal places. For part-time calculations the average weekly hours are rounded to the nearest 2 decimal places.
- Minimum periods for which long service leave can be granted is 7 days. However, some agency agreements have minimum periods of greater than 7 days (some have 15 day minimums). Where agency agreements allow for periods of leave
- LSL is not to be granted in patterns where a period of annual leave breaks the LSL period, e. The granting of leave in such patterns would unfairly advantage employees and add to the costs and LSL liabilities of agencies.

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- Periods of LSL include weekends and public holidays. LSL is not deducted for a weekend or public holiday where the period of LSL applied for ends on a Friday or on the day before a public holiday, subject to the minimum 7 days.
 - Separate applications for LSL where only a weekend and/or a public holiday intervenes, should not be granted.
 - Annual leave may be granted in conjunction with LSL but **not** where it breaks a period of LSL to take advantage of weekends or public holidays.
 - Payment during LSL may be at half or full pay. 3 months of LSL on half pay would result in a deduction of 1.5 months from the LSL credit.
 - Where an employee who ceases due to minimum age retirement or an employee who is retrenched has at least 1 year's service (but less than 10 years' service) **may take**, or be paid in lieu, for any pro-rata LSL.
 - Where an employee ceases due to ill-health or is invalidity retired, and has at least 1 year's service (but less than 10 years' service), they are eligible for pro-rata payment in lieu of LSL, but **not** a grant of leave.
 - An employee using part-time LSL paid at an hourly rate different to their current part-time arrangement hourly rate accrues LSL at the current applicable working rate ie. the rate in the current part-time work arrangement. For example, a part-time employee using full-time LSL accrues LSL at their current part-time rate.

15. FINAL QUIZ

1. Is HDA included in salary when paying in lieu of LSL?

2. What is the formula for calculating payment for LSL in lieu?

3. In which circumstances is payment made in lieu of LSL for service less than 10 years?

4. What is a category A employee?

5. What is a category B employee?

6. What is the minimum period (not qualifying) for which LSL can be accessed/granted?
