

Fact sheet

Recognition of government service for extended leave purposes

This fact sheet deals with the recognition of government service of NSW government sector employees for the purpose of calculating their extended leave entitlement.

Key points:

- The Government Sector Employment Regulation 2014 (the Regulation) allows government sector employees, in certain circumstances, to have their former government service recognised for the purpose of accruing extended leave.
- These circumstances include:
 - where the employee's agency is of the type specified in the legislation; **and**
 - where the employee's service at the agency was continuous; **and**
 - where the employee's current service immediately follows service at the agency (i.e., within two months of leaving the agency).
- However, all periods of service in the NSW Public Service are taken into account for extended leave purposes, regardless of the duration of the break or breaks in the employee's service when an employee is returning to the NSW Public Service.

Determining if prior government service is recognised

Under the Regulation these criteria determine whether an employee's former government service is to be recognised:

1. The type of agency in which the employee was employed
2. Whether service in that agency was 'continuous'
3. Whether the subsequent government service 'immediately follows' the service in that agency.

1. The type of agency in which the employee was employed

Agencies Recognised

To be recognised, the service must have been in one of the following types of agencies (the 'agency'):

- a. A **government sector agency** as defined in section 3 of the *Government Sector Employment Act 2013* ('the Act')
- b. A **Commonwealth or interstate agency** as defined in clause 1 of Schedule 2 to the Regulation and includes a body that is:

- established under an Act of the Commonwealth or another State or Territory, *and*
 - under the control of a Minister of the Commonwealth or other State or Territory, *and*
 - part of the public service (however described) of the Commonwealth or other State or Territory, *and*
 - a body in which persons are employed under conditions substantially equivalent to the conditions under which Public Service employees are employed under the Act.
- c. A **'declared' Commonwealth or interstate agency**
- Under Schedule 2 of the Regulation, the Public Service Commissioner may declare that a specified body is, or is not, a Commonwealth or interstate agency for this purpose.
- A list of these agencies must be made publicly available and is located on the Public Service Commission website.
- d. A **related government service** means any service in which persons excluded by section 5 of the Act are employed, including:
- a judicial officer within the meaning of the *Judicial Officers Act 1986*
 - an officer or employee of either House of Parliament or any officer or employee under the separate control of the President or Speaker, or under their joint control
 - persons employed under the *Members of Parliament Staff Act 2013*
 - staff of the Independent Commission Against Corruption employed under the *Independent Commission Against Corruption Act 1988*
 - staff of the Audit Office employed under the *Public Finance and Audit Act 1983*
 - staff of the Judicial Commission of NSW employed under the *Judicial Officers Act 1986*.

Agencies Not Recognised

Prior service at one of the following types of agencies is not recognised (unless declared by the Public Service Commissioner):

- Local government authorities
- Universities or the governing bodies of universities
- NSW State-owned corporations
- Corporations owned by the Commonwealth or another State or Territory, or by the Crown in right of the Commonwealth or another State or Territory.

2. Whether service at the agency was 'continuous'

The period of employment in the recognised agency must have been continuous. Under Schedule 2, clause 3, of the Regulation, a person's employment by an employer is 'continuous' in relation to a period if the person remains employed by that employer for the whole of the period.

Continuity is maintained if the employee is retrenched or ceases employment due to a reduction of work but is re-employed by the employer within the next 12 months.

3. Whether the subsequent service 'immediately follows' the service at that agency

The employee's service at their current agency must 'immediately follow' the service at the agency.

Schedule 2, Clause 4, of the Regulation provides that ‘immediately follows’ means:

- the current service must commence *within two months* of leaving the agency, and
- service at the former agency must not have ended due to dismissal for disciplinary reasons.

Special cases

‘War service’

If the agency was the Australian Defence Force and the employee was engaged in full-time war service, then the current service must have commenced within 12 months of leaving the agency. However, it is still a requirement that service with the agency must not have ended due to dismissal for disciplinary reasons. ‘War service’ is defined in Schedule 2, clause 4(2), of the Regulation.

Where service in the NSW public service is broken

Where the employee is moving to a **NSW public service** agency, *all broken periods of service in the NSW public service* are to be considered recognised for extended leave purposes, regardless of the duration of the break or breaks in the employee’s service.

This is because it is an administrative practice of NSW public service human resource branches to recognise such broken periods of service, and so the ‘immediately follows’ test does not need to be met (Schedule 2, clause 6(2)(b)(ii), of the Regulation).

Note that this does not apply where the employee is moving to an agency in the NSW public sector that is not a *public service* agency.

Implications of recognising prior government service

Upon receipt of formal notification from the previous employer, the NSW government agency will recognise the eligible service for the purpose of calculating an employee’s extended leave entitlement.

Commonwealth or interstate agencies

Once the service has been recognised, there are further considerations where the former government agency was a Commonwealth or interstate agency.

No provision to transfer leave

While service with a Commonwealth or interstate agency is recognised, there is no provision to transfer any accrued leave that has fallen due from a recognised agency to the NSW Government.

Previous entitlement to take leave

An employee who **was entitled** to take leave in the former government agency is deemed to have taken or been paid out the value of the leave by the employer. In this case any accrued leave that has reached the stage where the employee had an entitlement to take or be paid it out (10 years in the case of the Commonwealth), then it is deemed that the leave has been taken or paid out.

While the service is recognised for extended leave purposes, only the length of service is recognised for accrual of extended leave in the NSW Government agency. The accrual rate is set to zero on commencing with that agency.

No previous entitlement to take leave

An employee who was not entitled to take leave in the former government agency because their accrued leave had not reached the stage where they were entitled to take it (eg less than 10 years in the case of the Commonwealth), has their previous service recognised and any **unexpended** extended leave accrual **entitlement or balance** (notified by the previous employer) added to their extended leave entitlement records.

The employee is entitled to the full leave accrual.

For example, a Commonwealth employee with six years recognised service:

- is eligible to have their previous service totalling six years recognised for the purposes of extended leave,
- was not entitled to take leave or to be paid out for any extended or long service leave accrued by their previous employer, and
- is entitled to the full extended leave accrual on their seven-year anniversary as if the employee had been employed in the NSW Government for the entire period.

Further Advice

This fact sheet was created to support the Government Service Recognition Tool. Further information is available with the Tool on the [NSW Industrial Relations website](#).

Before seeking advice please check the relevant legislation or industrial instruments when assessing the service to be recognised.

Individual employees

Please contact your agency's industrial relations or human resources area, who are responsible for making final decisions on behalf of your agency.

Industrial relations and human resources practitioners

Please refer any unresolved issues to your agency's designated advisor in Public Sector Industrial Relations.

Contact us

For more information please contact Public Sector Industrial Relations:

E: psir@industrialrelations.nsw.gov.au

W: <https://www.industrialrelations.nsw.gov.au/nsw-public-sector/>