



# Industrial Relations Advice 4/2022

## Casual employment and entitlements under the Long Service Leave Act 1958

### This IR Advice applies to:

- All occupational groups – eligible casual employment only

Issued by: Paul Wilding – Director, Employee Relations

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The information provided is current as of the time of writing and may be subject to review.

### Long Service Leave Act 1958 and casual employment

The [Long Service Leave Act 1958](#) (Act) prescribes a statutory entitlement to long service leave (LSL) which is lesser than that prescribed under industrial instruments.

Government Sector Labour Relations (GSLR) previously advised the Department and other agencies that the Act did not apply to **casual** employees. GSLR revised this advice and informed public sector agencies that the Act does apply to casual employees. Accordingly, the Department has identified employees who have an entitlement to LSL under the Act. Employees employed on a casual basis at any time from 26 September 2003 may have an entitlement to LSL under the Act.

The Department will adopt a staged approach in order to meet obligations to provide LSL to past and current casual employees. Stages 1 and 2 will provide full and final settlement of LSL entitlements earned under the Act. Stage 3 recognises LSL entitlements for casual employees in accordance with industrial instruments.

### Stage 1 - Employees with an accrued entitlement under the Act

The Department will notify eligible employees of their accrued entitlement to LSL under the Act. This notification will include how many days of LSL they have accrued, and an estimate of the monetary equivalent in lieu of leave.

Eligible employees with less than one day of LSL will have this entitlement paid out to them.

Eligible employees with one or more day/s of LSL may elect to take the LSL as leave. This leave will need to be accessed by **31 December 2022**. This will be paid as leave on the employee's casual employment record and they cannot undertake casual work during this leave period. They also cannot use it to replace a rostered permanent or fixed term day. Any remaining LSL accrued under the Act will be paid out on **19 January 2023**.

Previous employees who formally terminated their employment with the Department who believe they have an accrued entitlement to LSL under the Act may contact the Department regarding their circumstances to make a claim.

## Stage 2 - Employees with a pro rata entitlement under the Act

Where current employees have service under the Act which does not amount to an accrued LSL entitlement (pro rata LSL under the Act), the service will be transitioned so that it is recognised as contributory service towards an employee's LSL entitlement under the revised industrial instrument.

This will require service under the Act to be calculated as a percentage. That same percentage will be recognised as service under the revised industrial instrument.

### Example:

A full entitlement to LSL under the Act is **8 and 2/3 weeks**. Under the industrial instrument it is **13 weeks**.

An employee with 50% service under the Act, will be recognised as having already served 50% service at the time their LSL is transitioned to their relevant industrial instrument.

- In this scenario 50% service under the Act equates to **4 and 1/3 weeks**
- This will be considered as contributing **6 and 1/2 weeks** (50% service) towards an LSL entitlement under the industrial instrument of **13 weeks**

The full LSL entitlement of 13 weeks (or pro-rata where applicable) will be paid in accordance with the average normal weekly hours worked by the employee during their period of service.

## Stage 3 – Casual employment and LSL provisions under industrial instruments

The industrial instruments which cover the Department's employees have been amended such that casual employment is recognised for the purposes of LSL. Accordingly, the LSL entitlements for casual employees are no longer provided by the Act but by the employee's relevant industrial instrument.

Once transitional arrangements are determined, it is anticipated that LSL accruals for casual service will be visible to employees on HRMIS within 12 – 18 months. There will be further communication as this progresses.

### Contact:

For more information about industrial entitlement and conditions contact Labour Relations

LabourRelations.Queries@education.wa.edu.au

9264 4921 – Option 1