

# **CPSU (PSU Group) Submission**

## **Portable Long Service Leave Inquiry Submission**

December 2016

## Overview

The Australian Public Service (APS) employs 152,430 employees<sup>1</sup> whose wages and working conditions are largely contained in enterprise agreements. Additional entitlements are provided in separate legislation including long service leave, which is dealt with under the *Long Service Leave (Commonwealth Employees) Act 1976*.

Specifically, the *Long Service Leave (Commonwealth Employees) Act 1976* and *Long Service Leave (Commonwealth Employees) Regulations 1957* provide the following key details regarding eligibility and access to long service leave:

- Definition of salary;
- Meaning of employment in government service;
- Period of service and continuity of service;
- Leave and payments in lieu of leave;
- Calculating long service leave credit; and,
- Calculating rate of salary while on leave or in lieu of leave.

Many APS enterprise agreements build on the specifics in that legislation, for example providing detail on portability of long service leave and mobility.

Long service leave has important OH&S value:

- As Australia's population ages, measures will increasingly be needed to ensure long term labour force participation, including the provision of significant breaks away from work.
- Australians work some of the longest hours in the world. In 2015 Australia was ranked 7<sup>th</sup> in employees working very long hours by the OECD<sup>2</sup>. Long working hours need to be balanced with sufficient rest time away from work.
- However, only one in four Australian workers stay with the same employer for 10 years, meaning many Australians miss out on long service leave. Rather, the average job tenure for Australians is three years and four months<sup>3</sup>. A portable long service leave scheme would ensure that all Australians do not miss out on long service leave.

There are benefits for employers from an externally administered portable LSL scheme including as cost certainty and streamlined administration. It would also improve productivity and remove the incentive for employees to stay with an employer simply to achieve long service leave. Following the Terms of Reference, these issues are explored in more detail with particular reference to the APS experience.

### **a) the number of Australians in insecure work**

APS employment is governed primarily through the *Public Service Act 1999* s22(2) which states:

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<sup>1</sup> APSC (2015) APS State of Service Report 2014-15.

<sup>2</sup> OECD (2015) <http://stats.oecd.org/index.aspx?DataSetCode=BLI>

<sup>3</sup> McCrindle (2015) Average job tenure <http://mccrindle.com.au/the-mccrindle-blog/job-mobility-in-australia>

*The engagement of an APS employee (including an engagement under section 72) must be:*

- (a) as an ongoing APS employee; or*
- (b) for a specified term or for the duration of a specified task; or*
- (c) for duties that are irregular or intermittent.*

While many would consider the public service as typified by stable, permanent employment, the proportion of employees engaged as other than on-going has increased significantly over the last fifteen years (Figure 1).

According to the recent APS Statistical Bulletin<sup>4</sup> as of 30 June 2015, 15,932 employees were in non-ongoing employment with 5,463 of these classified as casual (intermittent and irregular).

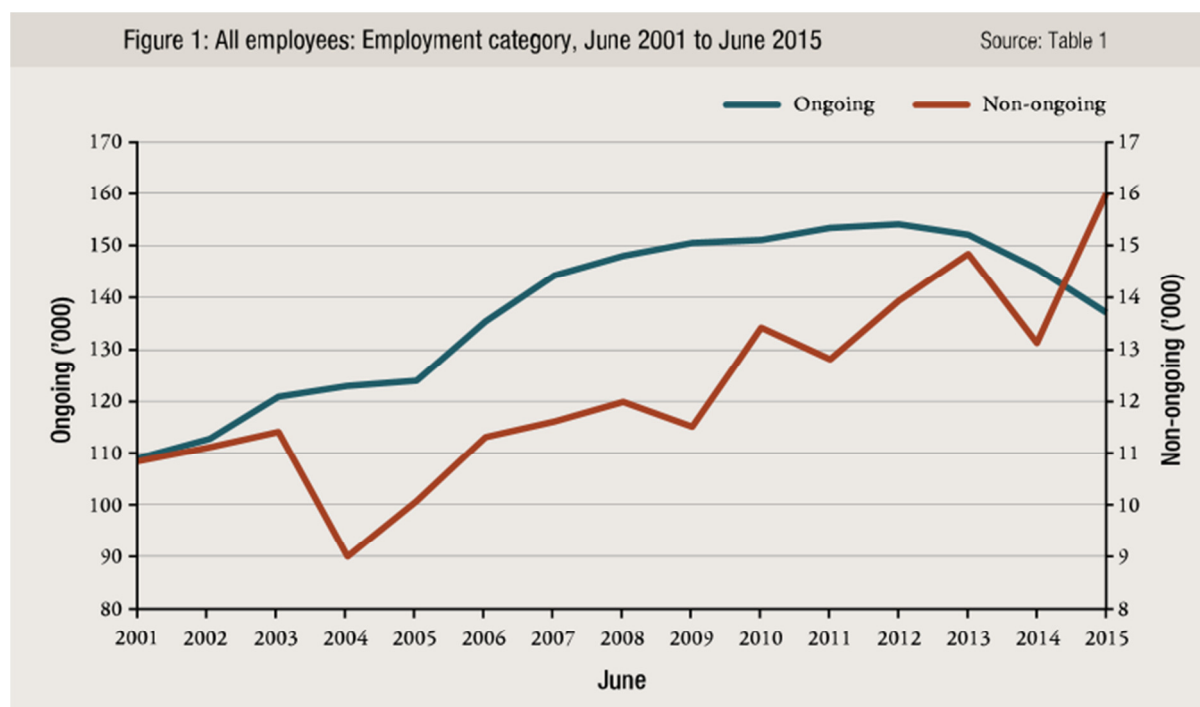


Table 1 outlines the staffing profile of non-ongoing employees by employment type and gender since June 2011.<sup>5</sup> The table shows that there has been an overall increase in the number of non-ongoing employees, with a high proportion being women.

<sup>4</sup> Australian Public Service Bulletin, State of the Service Series 2014-2015, <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin/statistics-2015>

<sup>5</sup> Australian Public Service Statistical Bulletins, <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin>

**Table 1: Staffing profile of non-ongoing APS employees 2010-11 – 2014-15**

Year	Men			Women			Total Non-Ongoing		
	Fixed/Specified Task	Casual	Total	Fixed/Specified Task	Casual	Total	Fixed/Specified Task	Casual	Total
2010-2011	3648	1663	5311	5493	2376	7869	9141	4039	13180
2011-2012	3446	2117	5563	5364	3346	8710	8810	5463	14273
2012-2013	2880	2909	5789	4416	4822	9238	7296	7731	15027
2013-2014	2077	3006	5083	3030	5122	8152	5107	8128	13235
2014-2015	2784	3046	5830	4544	5558	10102	7328	8604	15932

This is significant – it highlights the importance of long service portability. While in other sectors workers whose service is broken by virtue of their precarious contract status lose their service for the purpose of LSL, the *LSL Act 1976* protects APS non-ongoing workers to some extent (the specific provisions are discussed later).

The CPSU conducts a biennial survey of women members. The 2015/16 *What Women Want* survey draws from the responses of 12,502 women. Among the small number who were employed on a contract basis, 50.7 per cent reported they had more than one temporary engagement directly followed by another. Of concern is that more than half of these women had been employed on three or more consecutive contracts. In most jurisdictions even a ‘gap’ of one day would render these women ineligible for long service leave.

#### **b) the extent and nature of labour market mobility;**

Under certain circumstances, people moving into APS employment may attract portability. This is an important feature of the scheme. For example, it allows public servants to move into the private sector for periods of time and bring those skills back into the APS without breaking their continuity of service.

Recent APSC data<sup>6</sup> provides a picture of where employees work prior to joining the APS. While the data is limited, it is clear that in the APS, a significant proportion of new employees come from the private sector. Given the value placed on private sector experience, it is incongruous that these workers are only afforded continuity of service if they have previously worked in the public sector before leaving for the private sector, then joining the APS. It must also be noted that there is a significant gap in the data. Better recording of prior work experience is vital for evidence based policy development.

According to the APSC data<sup>7</sup> mobility *between* agencies has varied over the past 15 years. During 2014–15 the overall mobility rate of 1.6 per cent was an increase from

<sup>6</sup> Australian Public Service Bulletin, State of the Service Series 2014-2015, <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin/statistics-2015/movements#mobility>

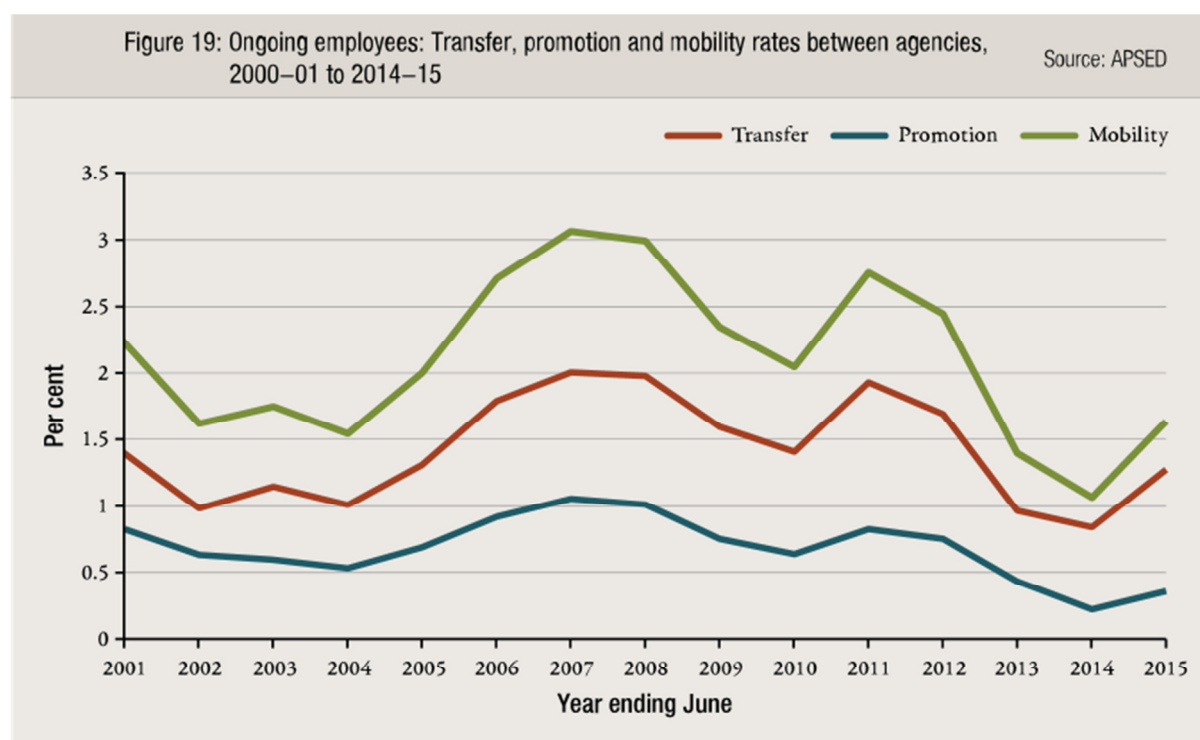
<sup>7</sup> Australian Public Service Bulletin, State of the Service Series 2014-2015, <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin/statistics-2015/movements#mobility>

1.1% in 2013-14. The transfer rate increased from 0.8 per cent to 1.3 per cent and the promotion rate increased from 0.2 per cent to 0.4 per cent.

Mobility has consistently been higher for women than for men. During 2014–15, the mobility rate was 1.8 per cent for women and 1.3 per cent for men (up from 1.1% and 1.0% respectively during 2013–14).

In general, mobility between agencies is higher at higher classifications. The mobility rate for the SES was 5.3 per cent, up from 3.9 per cent in the previous year. Mobility for EL employees was 1.8 per cent, up from 1.6 per cent and mobility for APS 1–6 employees was 1.5 per cent, up from 0.8 per cent.

While this increased mobility may be a result of the now lifted APS recruitment freeze, there are clear benefits to the employer of mobility within the service, particularly in terms of skill development.



**c) the objectives of portable long service leave schemes, and the key components that might apply;**

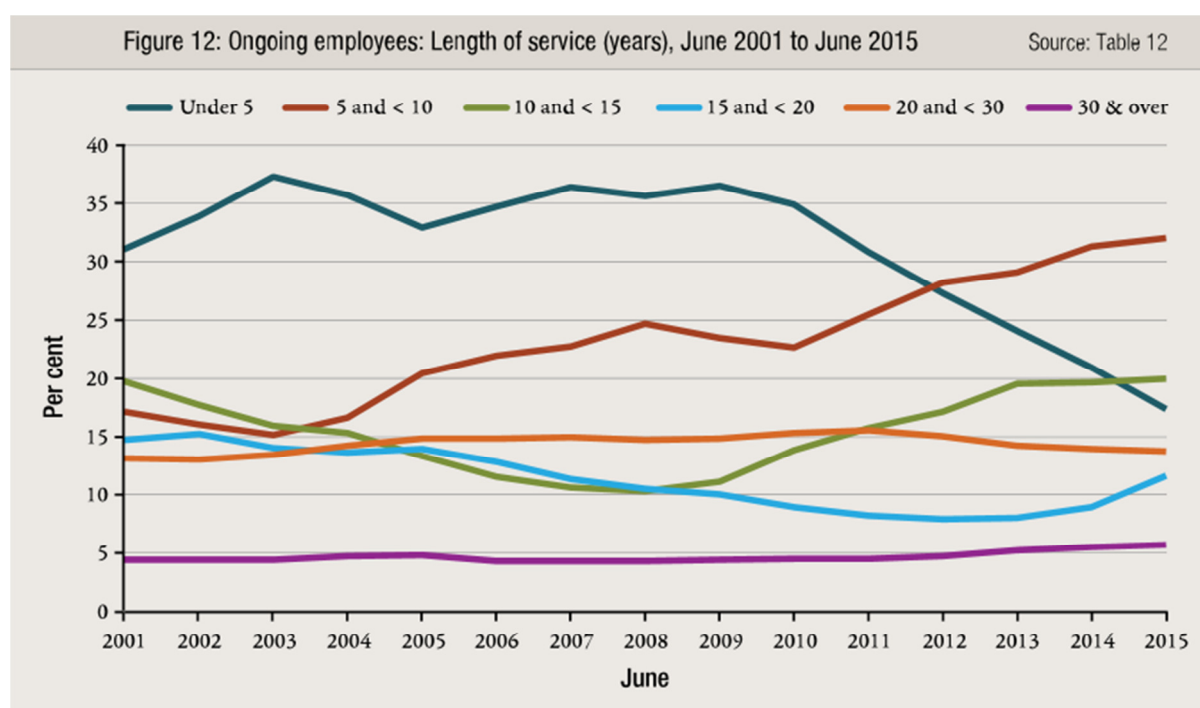
The key components of long service leave in the APS are:

1. Length of service
2. Prior service
3. Continuity of service

## Length of service

Length of service is the key component in all LSL schemes. In the APS, the Act requires 10 years service in order to become entitled to LSL. The median length of service for ongoing employees at June 2015 was 10.2 years, up from 9.4 years at June 2014.

The proportion of ongoing employees with fewer than five years of service has dropped, reflecting the lower number of engagements of new employees over the past few years. At June 2015, 17.3 per cent of employees had fewer than five years of service, compared with 20.9 per cent last year. At the other end of the spectrum, the proportion with 30 or more years of service was 5.7 per cent at June 2015, an increase from 5.5 per cent from last year (see Figure below).<sup>8</sup>



Unfortunately, it does not appear that the APS publishes statistics on the length of service of non-ongoing employees. The CPSU WWW survey however does suggest that where women are employed on contract in the APS, the majority are on rolling contracts – it is the recognition of prior service and the definition of continuity which determine these women’s eligibility for LSL.

<sup>8</sup> Australian Public Service Bulletin, State of the Service Series 2014-2015, <http://www.apsc.gov.au/about-the-apsc/parliamentary/aps-statistical-bulletin/statistics-2015/ongoing#service>

## Prior Service

For the purpose of long service leave in the APS there are two aspects which impact on whether it can be transferred to a new employment arrangement, the first being recognition of prior service, and second, continuity of service.

The LSL Act details which service can be recognised as part of an employee's period of service for the purposes of calculating long service leave entitlements. Under the Act this is restricted to other government type service, specifically s11 states:

### ***Period of service***

*(1) Subject to this Act, the period of service of an employee for the purposes of this Act is the period during which he or she has been employed continuously in Government Service.*

*(2) Where, prior to his or her current period of employment in Government Service, an employee was employed continuously in:*

- (a) any service of a State;*
  - (b) any service of an authority of a State;*
  - (c) the Public Service of a Territory, the ACT teaching service, or the Teaching Service of the Northern Territory;*
  - (ca) any service of an authority of the Northern Territory, not being employment at a time when the authority was a public authority of the Commonwealth;*
  - (cb) any service of an authority of the Australian Capital Territory, not being employment at a time when the authority was a public authority of the Commonwealth;*
  - (d) any service of an authority established or constituted by or under a law of an external Territory;*
  - (e) the Public Service of the former Territory of Nauru; or*
  - (f) other relevant service;*
- and the period for which he or she was so employed was continuous with his or her current period of employment, his or her period of service for the purposes of this Act includes, subject to this Act, the period for which he or she was so employed.*

*....*

*(5) For the purposes of paragraph (2)(f), employment:*

- (a) as a member of the Defence Force;*
  - (b) as a person holding an office, or employed, under the Reserve Bank Act 1959 or the Commonwealth Banks Act 1959 ; or*
  - (c) outside Australia as a person appointed or engaged by the Commonwealth after the commencement of this Act for employment outside Australia only;*
- shall be deemed to be employment in other relevant service.*

In addition to prior employment which will be recognised the section also specifies that the employment has to be continuous, that is no break in service.

### Continuity of service

Continuity of service is an important aspect for determining eligibility of long service leave entitlements as it determines whether there is a break in service. Unlike some state jurisdictions which do not recognise service where the employee resigns even if they subsequently are re-employed, under the LSL Act, s12(5) states:

*(5) Where a continuous period of employment of a person in a qualifying service has commenced after, but not more than 12 months after, the expiration of a continuous period of previous employment of the person in a qualifying service, those periods of employment shall, for the purposes of this Act, be deemed to be continuous with one another.*

So in areas identified in s11, service for the purpose of LSL is counted provided it is not broken by a period longer than 12 months. This is important as it does allow public servants to gain skills for a time in the State jurisdictions and return to APS employment, without service being broken.

#### **(i) the impact of varying state and territory long service leave arrangements on a potential national long service scheme administered by the Commonwealth, and**

Different leave duration and years of service required to accrue leave would need consideration in any changes to LSL to provide portability. For example, in the APS employees require 10 years service before they are entitled to access LSL, where as in NSW it is 5 years.

The treatment of breaks in service is another area key of difference that would require consideration in the development of a national scheme.

#### **(ii) the capacity to operate such schemes within or across jurisdictions, including recognition of service; and**

The LSL Act is designed to work across jurisdictions, as APS employees work across all states and territories. In this context, s 11 of the Act enables recognition of prior government service in states and territories, so on the face of it, a cross-jurisdictional operation of a LSL scheme is not a barrier to the development of a national system for other employees.

### To conclude

There are significant benefits to employers and employees of a portable long service leave scheme. Under specific criteria, portable long service leave has operated in the Commonwealth public service since 1976 under the Long Service Leave Act. Should the Inquiry agree that there is merit in extending long service leave portability to all workers, a detailed assessment of how breaks in service, prior service and the



different entitlements in other jurisdictions are treated is required. The APS experience shows that it is indeed possible, providing a useful starting point for the development of such a scheme.