

/// Chief Minister's Department Governance Division

MOBILITY BETWEEN THE APS AND ACTPS

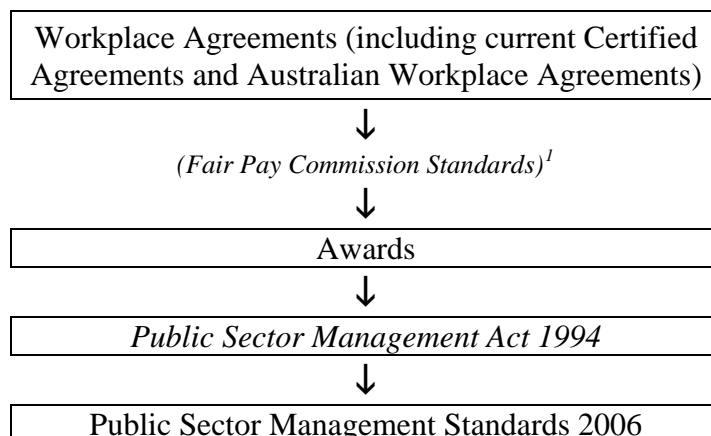
- **HR Directors / Managers**

Purpose

1. Mobility arrangements allow staff to take accrued entitlements with them when they move from the ACT Public Service (ACTPS) to the Australian Public Service (APS), and visa versa. This Information Note provides Agencies with general information about the entitlements staff retain when moving from one service to the other. **Note:** in most cases this is not a transfer, but a resignation from one service and separate engagement with the other, however, staff moving to the ACTPS may be taken to have a 'deemed transfer'.

ACT Public Service Employment Framework

2. The main elements of the ACTPS legislative framework are detailed below. Background knowledge of this framework is useful for all employment related issues.
 - [Public Sector Management Act 1994](#) and [Management Standards 2006](#) (PDF file);
 - Agency Certified Agreements; and
 - Template Agreement comprising Part 1: Common Core Conditions and Part 2: Agency specific conditions;
 - Non Template Agreements (occupational specific agreements);
 - Awards.
3. The following diagram represents a basic view of the employment framework.



¹ Until the first Fair Pay Commission determination, expected in Spring 2006, the full effect of the Fair Pay Commission Standards in relation to the legislative employment framework is unknown.

4. The [PSM Act](#) and [Management Standards](#) (PDF file) are subordinate to Workplace Agreements and Awards. This is because Workplace Agreements and Awards are made under provisions of Commonwealth laws, which override inconsistent ACT laws. However, Awards are limited to minimum entitlements on a small number of allowable matters. If a condition is listed in the Award but more generous entitlements are available under the PSM Act or Standards, the more generous provisions in the PSM Act apply. Awards are not intended to reduce more beneficial entitlements.
5. See [Recruitment in the ACT Public Service](#) for further information on the legislative employment framework.

Application

6. This note applies to staff who resign from either the APS or the ACTPS and then commence employment with the other service. In most circumstances the move between the services must be immediate in order for entitlement mobility to operate. Such engagement may be made subject to the normal conditions of an engagement, such as probation, and staff members are advised to contact the gaining Agency to confirm the conditions of engagement.

APS → ACTPS

7. Mobility arrangements for staff who move from the APS to the ACTPS are found in the PSM Act and Standards. The following table outlines the provisions relevant to staff transferring to the ACTPS.

ENTITLEMENT	ARRANGEMENT	AUTHORITY
Annual Leave	The ACTPS recognises accrued Recreation Leave credits at the date of exit from the APS.	PSM Standard section 470.
Annual Leave Loading	The ACTPS accepts Annual Leave Loading liability at the date of exit from the APS. Note: the APS does not currently provide Annual Leave Loading.	PSM Standard section 470.
Personal Leave (Sick Leave)	The ACTPS recognises Personal Leave entitlements and accrued service at the date of exit from the APS.	PSM Act, sections 115(7)(f) and (g).
Long Service Leave	The ACTPS recognises APS service for Long Service Leave accrual.	PSM Act, sections 115(7)(f) and (g).
Paid Maternity Leave	The ACTPS recognises APS service for Paid Maternity Leave purposes.	PSM Act, section 168 in conjunction with Standard part 4.19.

ENTITLEMENT	ARRANGEMENT	AUTHORITY
Service for Redundancy Purposes	If an officer is made redundant by the ACTPS, the ACTPS recognises all prior service with the APS for redundancy purposes.	Standard section 74.

8. If a person is to be taken to have a deemed transfer from the APS to the ACTPS they need to resign from the APS on the day they commence with the ACTPS (by virtue of the PSM Act subsections 115(6)(c) and 115(6)(d)). In order that they are then able to start with the ACTPS on that same day, the person needs to resign from the APS at 8.30am on the day he or she commences with the ACTPS.

ACTPS → APS

9. Following the introduction of the [Public Service Act 1999](#), reciprocal mobility arrangements ceased to operate. This Information Note provides information about the arrangements that apply under legislation.
10. **However, Agencies must advise staff to seek advice from the gaining Commonwealth Agency to confirm the arrangements, and not rely solely on this advice.**

ENTITLEMENT	ARRANGEMENT	AUTHORITY
Annual Leave	Accrued Annual Leave credits will be recognised by the APS. The credits transferred will be those held by the staff member at the date of exit from the ACTPS. This only applies to ACT officers. It is at the discretion of the gaining Agency whether leave accrual will be recognised for employees.	Australian Capital Territory Government Service (Consequential Provisions) Act 1994 , section 25(3).
Annual Leave Loading	APS employees do not accrue an Annual Leave Loading. ACTPS Staff are advised to claim any Annual Leave Loading outstanding at their date of exit from the ACTPS prior to commencing employment with the ASP.	
Personal Leave (Sick Leave)	Mobility of Personal Leave is decided by each Commonwealth Agency. APS Policy Parameters for Agreement Making require personal leave accrued by an officer with the ACTPS to be retained by APS Agencies on engagement (providing there is no break in service).	

ENTITLEMENT	ARRANGEMENT	AUTHORITY
Long Service Leave	<p>Service with the ACTPS is recognised by the APS when calculating accrual of service for Long Service Leave eligibility.</p> <p>The intervening period between completing employment with the ACTPS and APS must not exceed 12 months.</p>	<p><u><i>Long Service Leave (Commonwealth Employees) Act 1976</i></u>, section 11(2) (Note section 12 regulates the 12 months intervening period).</p>
Paid Maternity Leave	<p>It has been a longstanding practice for the APS to recognise service with the ACTPS as qualifying service for Paid Maternity Leave. However, as more recent legal advice on this matter has proved inconclusive, it is not possible to provide clear direction at the current time. Staff seeking to confirm their eligibility for Paid Maternity Leave within the APS should contact the gaining Commonwealth Agency.</p> <p>The Department of Employment and Workplace Relations is seeking further legal guidance on this matter.</p>	
Service for Redundancy Purposes	<p>Service that is recognised for redundancy purposes in the APS is set out in relevant APS industrial instruments (CAs/AWAs, and the APS Award). The general rule, however, is that only continuous Commonwealth service counts for redundancy purposes, so service with the ACTPS is <u>not</u> generally recognised when a person is made redundant by their APS Agency. Any period of service with the ACTPS generally also breaks continuity of service for redundancy purposes in the APS, so it is likely that any prior periods of Commonwealth service will also not count.</p> <p>An exception to this general rule is where APS employees were compulsorily moved from the APS to the ACTPS on its establishment on 1 July 1994 and have subsequently returned to the APS. ACTPS service, and any prior Commonwealth service, is generally recognised for redundancy pay purposes in the APS in these circumstances provided normal APS continuity tests are met.</p>	<p>Commonwealth Agency certified agreements/AWAs; clause 23.4 of the Australian Public Service Award 1998.</p>

Further Information

11. HR areas that require further information regarding mobility can contact:
 - Policy Officer on (02) 6207 5586; or
 - Senior Policy Officer on (02) 6207 1255.

12. Employees requiring have further information are advised to contact the HR area in the gaining ACT or Commonwealth Agency for advice.