



Determination 3.1:

Employment Conditions – Hours of Work, Overtime and Leave

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**Government
of South Australia**

Office of the Commissioner
for Public Sector Employment

Contents

Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave	7
Who is covered by this Determination?	7
Terminology	8
Minimum Requirements.....	8
Operative Effect.....	8
Delegation	8
Operation of the <i>Fair Work Act 1994 (SA)</i>	8
Section A Hours of Work and Overtime	9
1. Delegation.....	10
2. Hours of Duty	10
3. Overtime for Part Time Employees	10
Section B Sick Leave	11
1. Sick Leave	12
Casual employees	12
2. Sick Leave Credit.....	12
3. Granting Sick Leave.....	13
4. Medical Certificate for Sick Leave Purposes	13
Medical certificate or other approved certification	14
5. Medical Appointments.....	14
6. Remuneration During Sick Leave.....	15
7. Part Time Employees.....	15
8. Employees Working Compressed Weeks	16
9. Employees Working Under a Flexi Time Arrangement.....	16
10. Employees Working From Home.....	16
11. Sick Leave While On Other Types Of Leave	17
Re-credit of leave	17
Sick leave for pregnancy	17
Suspension from duty without remuneration	17
12. Family Carer’s Leave	17
Application for family carer’s leave	18
Casual employees.....	18
Employees working under flexible working arrangements.....	18
Carer’s leave for COVID-19 purposes	18
13. Exhaustion of Sick Leave Entitlement (Credit).....	19

Effect of leave without pay (due to illness or injury) on accrual of leave entitlements.....	19
14. COVID-19 ARRANGEMENTS.....	20
Absence due to COVID-19	20
Requirement for employees to self-report.....	20
Vulnerable employees	20
Regular PCR testing required in line with a relevant direction.....	20
Special Leave with Pay for COVID-19 related absences	21
Attending COVID-19 vaccination appointments	21
Section C Recreation Leave	22
1. Recreation Leave Accrual	23
Casual Employees.....	23
Employees rostered over seven days per week.....	23
2. Taking Recreation Leave	23
3. Remuneration During Recreation Leave	24
Payment in Advance.....	25
4. Recreation Leave Loading	25
Employees other than shift workers and employees rostered over 7 days.....	25
Shift workers and employees rostered over 7 days.....	25
Part time employees.....	25
Employees purchasing leave	25
5. Closure Of Workplaces	25
6. Public Holidays	26
7. Part Time Employees.....	26
8. Employees Purchasing Leave.....	26
9. Employees Working Compressed Weeks	26
10. Employees Working Under a Flexi Time Arrangement.....	27
11. Employees Working From Home.....	27
12. Outside Employment etc During Recreation Leave	27
Section D Long Service Leave.....	28
1. Long Service Leave Entitlement.....	29
Casual employees	29
2. Public Sector Employees with PS Act Long Service Leave Provisions	30
3. Applying For and Taking Long Service Leave	31
Minimum period of long service leave.....	31
Leave of at least seven calendar days.....	32
Leave of less than seven calendar days	32

4. Remuneration During Long Service Leave	32
Payment in advance	33
5. Extended Long Service Leave.....	33
6. Payment of Leave Upon Transfer or Assignment to a Lower Remuneration.....	33
7. Part Time Employees	33
Remuneration for part time employees	34
8. Employees Purchasing Leave	34
9. Working Compressed Weeks	34
10. Employees Working Under a Flexi Time Arrangement	35
11. Other Types of Leave During Long Service Leave	35
12. Miscellaneous Matters.....	35
Programmed days off or public holidays	35
Resumption of duty during long service leave.....	35
13. Outside Employment etc During Long Service Leave.....	35
Appendix 1: Long Service Leave Accrued Prior to 1 July 1986	36
Appendix 2: Calculation of Long Service Leave entitlements and payment for employees with part time service	37
Section E Public Sector Skills and Experience Retention Entitlement.....	43
1. Retention Leave Entitlement	44
2. Public Sector Employees Covered by PS Act Retention Leave Provisions (“Eligible Employees”)	45
3. Applying For and Taking Retention Leave.....	46
Remuneration during retention leave	46
Payment in advance	46
4. Payment of Leave Upon Transfer or Assignment to a Lower Remuneration Level	47
5. Part Time Employees	47
6. Casual Employees	47
7. Employees Working Compressed Weeks	48
8. Employees Working Under a Flexi Time Arrangement	48
9. Leave Entitlement Not Taken Within 5 Years	48
10. Election to Convert Entitlement to a Monetary Amount.....	49
11. Miscellaneous Matters.....	49
Programmed days off or public holidays	49
Resumption of duty during retention leave.....	49
12. Outside Employment etc During Retention Leave	49
Appendix 1: Calculation of Retention Leave Entitlements for Employees with Full-Time Service	50

Appendix 2: Calculation of Retention Leave Entitlements and Payment for Employees with Part Time and Casual Service and Changes in Service.....	53
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Section F Special Leave With Pay and Leave Without Pay57

TABLE 1 – Categories for Special Leave With Pay.....	61
1. Part 1 – Special Leave with Pay will be Approved and not Considered as Part of the 15 Days Per Service Year.....	62
A. Attendance in Court as a Witness on Behalf of the State	62
B. Bereavement Leave	62
C. Blood Donors	63
D. Defence Reserves Leave.....	63
E. Disability Resulting From War Service Leave Eligibility	64
F. Family and Domestic Violence Leave.....	65
G. Jury Service.....	68
H. Travelling Time for Employees in Remote and Very Remote Localities.....	69
I. First Nations Voice to Parliament.....	70
2. Part 2 - Special Leave with Pay may be Approved - Total of all Leave Must Not Exceed 15 Days Per Service Year	70
A. Community Responsibilities	70
B. Individual Needs and Responsibilities	72
C. Urgent Pressing Necessity.....	73
3. Part 3 - Other Special Paid Leave Arrangements Which May Be Approved and Not Considered As Part Of The 15 Days Per Service Year.....	73
A. Elite athletes	73
B. Responsibilities as an employee representative	75
C. Trade Union Training Leave.....	75
D. COVID-19 related absences	76
4. Paid Emergency Response Leave	76
5. General Matters	77
6. Employees Working Under Flexible Working Arrangements	78
7. Parental Leave.....	79
8. Leave Without Pay for The Purpose Of A Career Break.....	82
9. Leave Without Pay to Work In Another Organisation.....	83
10. Substitution Of Leave Without Pay for Paid Leave And Credit Of Paid Leave	84
11. Term And Casual Employees.....	84
12. Effects Of Leave Without Pay.....	85
13. Outside Employment etc. During Special Leave.....	88

Section G Recognition of Prior Service and Leave Accruals	89
1. Military Service.....	90
2. Members Of Government Boards and Committees	91
3. Break In Service.....	91
4. Casual Employees	91
5. Determination of Leave Entitlements.....	91
6. Leave Liabilities	93
7. Payment For the Value Of Accrued Recreation, Long Service Or Retention Leave Entitlements ...	95
8. Calculation of Payment	96
Appendix 1: Declaration in Relation to Payment to Dependents.....	98
Appendix 2: Recognition of Prior Service Examples of Calculation of Annual Leave, Sick Leave and Long Service Leave.....	100
Glossary	104
1. Effective Service	104
2. Industrial Instrument.....	104
3. Normal Salary	104
4. Recreation Leave	104
5. Service Month	104
6. Service Year	104

Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave

Date of Operation 1 September 2023

WHO IS COVERED BY THIS DETERMINATION?

This Determination applies to:

- employees in the Public Service (that is, employed in an administrative unit or attached office, as defined by the *Public Sector Act 2009* (“PS Act”))
- public sector employees whose employment has been declared by another Act or the *Public Sector Regulations 2010* (“PS Regulations”) to be employment to which section 16 of the PS Act applies.
- all public sector employees in respect of family and domestic violence leave.

Note:

Regulation 13 of the PS Regulations operates to apply Part 7 of the PS Act provisions as modified, to prescribed public sector employees to the extent specified in the Regulation.

Regulation 13 of the PS Regulations operates to apply Part 7 of the of the PS Act provisions relating to long service leave and the public sector skills and experience retention entitlement to other public sector employees to the extent specified in the Regulation.

Regulation 9(4) of the PS Regulations operates to apply Section F of this Determination to all agencies and employees covered by the *South Australian Public Sector Enterprise Agreement: Salaried 2021* but not otherwise covered by Part 7 of the PS Act only to the extent that Section F is relevant to special leave with pay.

The family and domestic violence leave component of Section F of this Determination applies to all public sector employment, as it reflects the entitlement under Schedule 3B of the *Fair Work Act 1994* (SA) (“FW Act”). A Commissioner’s determination otherwise applies to all public sector employment to the extent it relates to special leave with pay and is relevant to domestic/family violence leave, by reason of regulation 9(8) of the PS Regulations.

The Human Resource function within your agency can clarify whether this Determination or parts applies to you.

TERMINOLOGY

In this Determination, a reference to “employee”, “casual employee”, “public sector agency” and “agency” has the same meaning as in section 3(1) of the PS Act.

Minimum Requirements

Chief executives and other agency heads must ensure compliance with the minimum requirements in this Determination as per the PS Act and applicable industrial instrument(s).

Operative Effect

This revised Determination is made pursuant to, and operates in accordance with, the PS Act and the PS Regulations as applicable from time to time and has effect on and from 1 September 2023.

Delegation

With the exception of categories of special leave with pay as outlined in Section F of this Determination, the Commissioner for Public Sector Employment delegates to chief executives and other agency heads the authority under section 16(2)(b) of the PS Act to determine matters arising from, or in relation to, this Determination, provided that the delegation must be exercised in accordance with the content of this Determination, the PS Act, regulations and any applicable industrial instruments and other Commissioner’s Determinations, including but not limited to *Commissioner’s Determination 3.2: Employment Conditions – Remuneration – Allowances and Reimbursements* and *Determination 5: Classification and Remuneration for Employees*.

A chief executive or agency head may further delegate this authority in writing to employee/s within the administrative unit or attached office (either by name or by reference to the title of the set of duties being performed (including on an acting or temporary basis)).

Operation of the *Fair Work Act 1994 (SA)*

Section 73 of the PS Act prescribes that a determination, direction or decision under the PS Act affecting remuneration or conditions of employment is subject to an award, determination or enterprise agreement in force under the FW Act.

Section A

Hours of Work and Overtime

1. DELEGATION

In respect of this Section the Commissioner for Public Sector Employment (CPSE) delegates to the chief executives in administrative units and agency heads in other agencies covered by this Determination the authority under section 16(2)(b) of the PS Act to:

- determine the hours between which employees appointed pursuant to the PS Act (PS Act employees) perform their duty
- determine the payment of overtime to non-executive PS Act employees whose salaries exceed the maximum salary at the classification level ASO6 or where relevant the maximum salaries as outlined at clause 16.2 of the *South Australian Public Sector Enterprise Agreement: Salaried 2021* (or its successor), limited to where employees are regularly required, and there is an ongoing need for such employees to work overtime.

The power conferred by this delegation must be exercised in accordance with the provisions of this Determination and the provisions of *Determination 5: Classification and Remuneration for Employees*.

2. HOURS OF DUTY

The ordinary working hours of full-time employees will be an average of 37.5 or 38 hours per week. Employees are required to perform their ordinary hours of duty between the hours of 8.00am to 6.00pm, Monday to Friday, inclusive, except as provided by either:

- an existing determination of the CPSE
- an Award or Enterprise Agreement
- a determination made by a chief executive or agency under delegated authority from the CPSE.

Chief executives of administrative units and other agency heads should also refer to specific hours of duty clauses contained in relevant industrial instruments, which may provide employees with provisions in addition to those contained in this Determination.

Prior to introducing any intended changes to an employee's (or employees') ordinary hours of work, chief executives, agency heads or delegates are required to consult with the employee (or employees) and any applicable employee association and to give reasonable notice of the changes that will be implemented.

3. OVERTIME FOR PART TIME EMPLOYEES

Chief executives, agency heads or delegates must secure the agreement of any employee working on a part time basis for the employee to work overtime.

Time worked up to 7.5 or 7.6 hours in one day, is not to be regarded as overtime but as an extension of the normal hours of duty for that day and the employee is to be remunerated at their normal rate of pay.

Overtime will not be payable unless the total time worked on any day exceeds 8 hours. Part time employees will be paid at the appropriate overtime rates in accordance with the provisions of the relevant industrial instrument.

Section B

Sick Leave

1. SICK LEAVE

An employee (other than a casual employee) is entitled to sick leave in accordance with this Determination, the PS Act (see section 51 and clause 6 of Schedule 1) and the PS Regulations (see regulation 22).

All sick leave previously accrued and not taken by an employee up to the date of commencement of this revised Determination will remain unchanged.

For the purposes of this Determination:

- “sick leave” means a period of paid leave provided to remunerate an employee in circumstances if they are unable to perform their duties due to non-work-related illness or injury and if an applicable industrial instrument refers to “personal leave – injury and sickness”, that will be taken as a reference to “sick leave”
- references to “the equivalent of days, weeks, months or years” means the equivalent number of hours normally worked by a full-time employee during such periods.

An employee who has exhausted their accrued sick leave entitlement may be granted other accrued or special leave as discussed below (refer to part 2 Sick Leave Credit).

Compensable illness or injury: any absence from work due to a compensable work-related injury or illness pursuant to the *Return to Work Act 2014* is not sick leave. An employee is not required to apply for leave in circumstances where they have a compensable injury or illness.

Note: Employees are encouraged to contact their superannuation fund to discuss any entitlement to income protection depending on individual circumstances.

Casual employees

A casual employee does not accrue and is not entitled to take sick leave.

Any sick leave entitlements accrued by an employee during recognised prior service must be credited to the employee, but the employee will not be able to access such leave while employed as a casual employee.

2. SICK LEAVE CREDIT

“Sick leave credit” means the sick leave entitlement of an employee accrued over the period of the employee’s service.

An employee is to be credited with 1 day of sick leave for each completed month of the employee’s service (refer to part 7 for part time employees).

An employee is entitled to take paid sick leave not exceeding the amount of the employee’s accrued sick leave unless otherwise provided for in this Determination.

There is no limit on the amount of sick leave credit that an employee may accrue during their employment in a public sector agency or agencies.

If the previous service of an employee within an agency to which this Determination applies is recognised and their immediate prior service ceased before the completion of a full service month (i.e. the employee did not accrue any sick leave credit in relation to that partial service month), the employee

will be entitled to a pro rata sick leave credit based on the nature (full time or part time) of that service and the proportion of the incomplete service month relative to a full month.

If an employee has no sick leave credit, refer to part 13 Exhaustion of Sick Leave Entitlement (Credit).

Note: If an employee transfers from employment in one South Australian public sector agency to another public sector agency, depending on the payroll system utilised by the particular agency, there may need to be a manual adjustment made to an employee's sick leave credit at the time the employee moves to other public sector employment.

3. GRANTING SICK LEAVE

If a chief executive, agency head or delegate is satisfied that an employee is unable to perform their duties because of illness or injury, they must grant the employee sick leave, subject to the following:

- the employee having sufficient accrued sick leave credit
- the employee, as soon as is reasonably practicable, notifying an appropriate person in the public sector agency of their unfitness for work due to illness or injury, and of the probable duration of their absence
- the employee making an application for leave to the agency in a form approved by the chief executive or agency head
- if absent for a continuous period of more than 3 working days, or if required by the public sector agency, the employee supporting their application by providing a medical certificate or other approved certification in accordance with this Determination.

An employee's sick leave entitlement must be debited according to the duration of time (counted to the nearest quarter of an hour) for which the employee has been granted sick leave.

An employee's application for sick leave is to be refused if the chief executive, agency head or delegate is satisfied, on the balance of probabilities, that the employee was not unfit for work or to perform their duties due to illness or injury for the period for which the leave has been claimed.

If an employee works only part of a day and is absent for the remainder of the day because they claim to be unfit to perform their duties due to illness or injury, and applies for sick leave, the application for sick leave must be based on the number of hours (counted to the nearest quarter of an hour) necessary to bring the day's total up to the normal hours that would otherwise have been worked on that day.

4. MEDICAL CERTIFICATE FOR SICK LEAVE PURPOSES

For the purposes of this Determination:

- "medical certificate" means a certificate signed by a person registered under the *Health Practitioner Regulation National Law (South Australia) Act 2010* to practise in the medical profession (other than as a student) certifying that the employee is unfit to perform their work by reason of illness or injury

- “other approved certification” means a certificate or other written confirmation signed by a person registered under the *Health Practitioner Regulation National Law (South Australia) Act 2010* to practise in a health profession (other than as a student) regulated by that Act, which a chief executive or agency head has determined is acceptable on its own or in conjunction with other documentation (e.g. a statutory declaration or affidavit) as may be required, to be evidence that the employee was/is unfit for to perform their work due to illness or injury.”

A medical certificate or other approved certification must verify that an employee has been unfit to work or perform their duties due to illness or injury for the relevant period (i.e. the commencing and concluding days) for which the employee has been and/or will be unfit to perform their duties as a result of illness or injury.

In addition, if the employee is suffering from an illness of a contagious or infectious nature or illness or injury that otherwise gives rise to a risk to the health and safety of the employee or other persons in the workplace, the certificate must include the date on which the employee’s presence at work would no longer create any risk of contagion or infection or other risk to the health and safety of them or others.

Medical certificate or other approved certification

If an employee is absent from duty for a continuous period of more than 3 working days on the basis they claim to be unable to perform their duties due to illness or injury, they must provide a “medical certificate or other approved certification” with an application for sick leave, other accrued leave or leave without pay. A chief executive, agency head or delegate may require an employee to produce a “medical certificate or other approved certification” for periods they claim to be unable to perform their duties due to illness or injury for lesser periods than 3 working days in appropriate circumstances (including, if appropriate, for each occasion the employee is absent from duty in circumstances where they claim to be unable to perform their duties due to illness or injury (seek Human Resource assistance if this is contemplated).

If the absence relates to COVID-19, the delegate should consider that an official SA Health or SA Pathology communication sent to the employee via text message is approved certification.

Agencies should advise individual employees of the requirements relating to medical certificates or other approved certification when they notify that they are unable to attend work.

If an absence exceeds 3 working days, an employee may be granted sick leave for the first 3 working days even if the medical certificate or other approved certification certifies them to be unfit for work only from the 4th (fourth) day and any subsequent day/s.

However, if there is no medical certificate or other approved certification covering the 4th (fourth) and any subsequent day/s of absence, the chief executive, agency head or delegate may determine not to grant sick leave for any of the period of the absence (unless the employee produces a medical or other approved certificate covering the first 3 days of the relevant absence for which sick leave may be approved).

If an absence exceeds 5 working days a form of approved certification must be provided.

5. MEDICAL APPOINTMENTS

Specialist or urgent appointments for medical or dental related reasons can only be taken during normal working hours with permission from the chief executive, agency head or delegate. It is expected that all routine appointments will be made, as far as practical, outside of normal working hours. A “routine

appointment” means an appointment that is not made as a result of an employee being unfit for duty due to illness or injury.

All medical appointments attended during normal working hours must be recorded as an absence, except in the circumstances outlined in *Determination 3.2: Employment Conditions – Remuneration – Allowances and Reimbursements, Attachment B Reimbursements – 11. Travel and Accommodation Expenses for Medical/Dental Treatment*, where travelling time to and from a medical appointment is to be regarded as on duty for administrative purposes.

Attendance at a medical or dental appointment must not be treated as sick leave unless the attending health practitioner certifies that the employee was unfit to perform their duties during such period.

When an employee attends a medical appointment as a consequence of an illness or injury which has been accepted as compensable in accordance with the *Return to Work Act 2014*, all time during working hours the employee is absent is to be recorded as time on duty, not as sick leave. Any absence from work to attend such appointment/s must be consistent with any applicable Recovery/Return to Work Plan.

6. REMUNERATION DURING SICK LEAVE

During approved sick leave employees are entitled to receive their “normal salary” (refer to Glossary for definition of “normal salary”), together with any allowances payable on an annual basis or for all purposes. Penalty rates are not payable.

An employee is not entitled to be paid unless the chief executive, agency head or delegate is given notice of the illness or injury, its nature and estimated period of absence; or if the nature or sudden onset of illness or injury makes it impractical to give prior notice, the notice must be given to the chief executive, agency head or delegate as soon as is practicable and preferably no later than 24 hours after the period begins.

7. PART TIME EMPLOYEES

Part time employees are to be credited with the equivalent of one day of sick leave for each completed month of service, which is calculated as a credit in hours as follows:

$$\begin{array}{rcccl}
 \text{Sick Leave Credit in Hours Per Month} & = & \text{Sick Leave Hours Normally Credited to Full-time Employee Per Month} & \times & \frac{\text{Total Part Time Hours Worked Per Week}}{\text{Hours Normally Worked Per Week by Full-time Employee}}
 \end{array}$$

Sick leave taken by part time employees must be based on the number of hours that the employee would have worked on the relevant day(s). Payment to the employee of sick leave will reflect the hours they would have worked on the relevant day(s), providing they have sufficient accrued entitlement.

If the number of hours worked by a part time employee is changed, sick leave credits for service up until the date of the change will not alter.

The monthly sick leave accrual due in the month that an employee varies their hours of work will be calculated on a proportional basis during that month.

For example:

- the accrual credit from the start of the sick leave accrual month to the date that the hours worked are varied
- the accrual credit from the date that the hours worked are varied to the end of the sick leave accrual month.

8. EMPLOYEES WORKING COMPRESSED WEEKS

A compressed working weeks arrangement does not affect an employee's entitlement to sick leave.

The number of hours the employee would normally have worked on a particular day but for the compressed weeks arrangement must be recorded as sick leave if an employee is unable to perform their duties due to illness or injury on that day. However, if the employee would be unable to perform their duties due to illness or injury on a day nominated as a non-attendance day then no sick leave is recorded for that day.

For example:

- if an employee on a compressed working weeks arrangement has nominated to work 10 hours on a Monday and is unable to attend work due to illness or injury on that day, then 10 hours sick leave is paid to the employee
- if an employee on a compressed working weeks arrangement has nominated to work 10 hours on a Monday and attends at work but leaves after 2 hours due to illness or injury, then 8 hours sick leave is paid to the employee
- if an employee on a compressed working weeks arrangement is ill or injured on a day nominated as a non-attendance day, then no sick leave application is to be submitted and no sick leave is payable in respect of that day.

9. EMPLOYEES WORKING UNDER A FLEXI TIME ARRANGEMENT

An employee who participates in flexi time arrangements, and who applies for sick leave on the basis they were unfit to perform their duties due to illness or injury, must apply for sick leave for the number of hours of their normal working day.

If an employee works only part of a day because of illness or injury, and applies for sick leave, the application for sick leave and any payment in respect of sick leave must be based on the number of hours (counted to the nearest quarter of an hour) necessary to bring the day's total up to the normal hours that would otherwise have been worked on that day.

10. EMPLOYEES WORKING FROM HOME

An employee's entitlement to sick leave and their obligations in respect of notifying they are unfit for work and/or applying for accrued sick leave benefits is/are not affected by a working from home arrangement.

If an employee applies for sick leave on the basis they are unfit to perform their duties due to illness or injury on the day or days that they were to be working from home, an application for sick leave and any payment must be for the usual hours worked. The requirements relating to medical certificates or other approved certification of illness or injury also apply.

11. SICK LEAVE WHILE ON OTHER TYPES OF LEAVE

Re-credit of leave

An employee who becomes ill or injured while absent from duty on approved recreation leave, long service leave, retention leave or special leave without pay associated with a purchased leave arrangement, such that if the employee had been required to work they would have been unable to perform their duties, may apply to have the time treated as sick leave and the other relevant leave entitlement re-credited. Such employee must provide a medical certificate or other approved certification in such circumstances.

Sick leave for pregnancy

Sick leave must not be granted if leave is sought solely on the basis that the period of absence is due to pregnancy. However, any illness or exceptional circumstances (as certified by medical or other approved certification) arising from the pregnancy which causes the employee to be unfit to perform their duties may be covered by sick leave. This includes any illness or exceptional circumstances that are experienced as a result of childbirth.

Suspension from duty without remuneration

An employee who is suspended from duty without remuneration pursuant to either section 55(1)(b) or section 57 of the PS Act or any other authority is not eligible for sick leave during the period of suspension.

12. FAMILY CARER'S LEAVE

For the purposes of family carer's leave, the following are to be regarded as members of a person's family:

- spouse (including a de facto spouse or a former spouse or de facto spouse)
- child or step child
- parent or parent in-law
- any other member of the person's household
- grandparent or grandchild
- any other person who is dependent on the person's care.

"Family carer's leave" can be used interchangeably with "personal leave to care for a family member", and "carer's leave" as expressed in relevant industrial instruments.

An employee with responsibilities for a member of their family who needs care and support from the employee due to injury, illness, or an unexpected emergency is entitled to up to 10 days in any completed year of continuous service (pro rata for part time employees) to provide care and support for such family member/s.

A period of leave taken as family carer's leave is to be deducted from the employee's sick leave credit.

Save for exceptional circumstances, an employee cannot take this type of leave if another person has also taken leave to care for the relevant family member/s.

If required by a chief executive, agency head or delegate, an employee must provide a medical certificate; or other approved certification; or statutory declaration that certifies that the person for whom they are caring is suffering from illness or injury and needs/needed the care of the employee.

As soon as practicable, an employee must give a chief executive, agency head or delegate notice of their intention or need to take family carer's leave, the name of the person requiring care, the relationship of that person to the employee, the reasons for the leave and the estimated period of absence.

If accrued sick leave has been exhausted, an employee is able to take leave without pay with the consent of a chief executive, agency head or delegate, for as long a period as agreed by the chief executive, agency head or delegate. In the absence of agreement of a chief executive, agency head or delegate to provide special leave without pay to an employee for a longer period, an employee is entitled to up to two days (a maximum of 16 hours) of leave without pay per occasion in circumstances where the employee is required to care for a family member(s) who is suffering from illness or injury. The requirements as to notice and evidence outlined above also apply.

Application for family carer's leave

Access to family carer's leave does not limit an employee's right to apply for special leave with pay to care for an ill or injured family member.

When considering an application for family carer's leave, a chief executive, agency head or delegate should have regard to other types of leave available to the employee and whether they should seek agreement by the employee to vary the terms and conditions of their employment to provide for flexible working arrangements in the short term.

Casual employees

Casual employees do not accrue sick leave and are not entitled to take family carer's leave but are entitled to not attend work, or, if relevant, leave the workplace early to care for a family member who is suffering from illness or injury, subject to the requirements as to notice and evidence outlined above. A casual employee is entitled to not attend work in such circumstances for a period of 2 days per occasion or other period as agreed by a chief executive, agency head or delegate.

A chief executive, agency head or delegate must not fail to re-engage a casual employee (provide them with hours of work) because the employee has accessed this entitlement. The discretion of a chief executive, agency head or delegate in respect to the engagement of a casual employee is not otherwise affected.

This entitlement does not alter the nature of a casual employment relationship.

Employees working under flexible working arrangements

Eligible employees working under flexible working arrangements (refer to *Commissioner for Public Sector Employment Guideline and Determination: Flexible Workplaces*) are entitled to 10 days of family carer's leave on the same basis as that relating to sick leave, as outlined in this Determination.

Carer's leave for COVID-19 purposes

Employees may access an uncapped amount of their accrued sick leave entitlements for COVID-19 caring purposes each year, which may include caring for school aged or pre-school aged children who are required to quarantine, or who are unable to attend childcare or school due to a site closure, or supporting remote-learning arrangements. Evidence of the need to access carers leave for COVID-19 purposes may be required in line with existing requirements for accessing sick leave. Such evidence can include official SA Health or SA Pathology communications sent via text message.

Carer's leave may also be utilised to accompany a child or dependent to a COVID-19 vaccination appointment.

Employees who are accessing carer's leave for any COVID-related purpose are encouraged to record the leave using the code "Sick COVID (Dependent)" on their leave application.

13. EXHAUSTION OF SICK LEAVE ENTITLEMENT (CREDIT)

If an employee has no sick leave credit, a chief executive, agency head or delegate may, subject to clause 6 of Schedule 1 of the PS Act, permit an employee to take sick leave in anticipation of the leave accruing to the employee, provided that if such employee ceases for any reason to be an employee then the sum equal to the sum paid to the employee in respect of that leave is payable to the public sector agency and is to be deducted from any amount payable to the employee on cessation of employment (see section 70 of the PS Act). Where there are insufficient funds to meet the relevant amount from monies payable to the employee on cessation of their employment, the debt is to be otherwise recovered pursuant to *Treasurer's Instruction No. 5* as a civil debt or overpayment of wages.

Alternatively, a chief executive, agency head or delegate may approve an application by an employee for recreation leave, long service leave or retention leave for an absence when the employee claims to be unable to perform their duties due to illness or injury, subject to the relevant accrued entitlement being available and the provision of an appropriate medical certificate or other approved certification.

A chief executive, agency head or delegate may approve an application by an employee for leave without pay for absences where the employee claims to be unable to perform their duties due to illness or injury up to a maximum period (per application) of 12 months, subject to the provision of an appropriate medical certificate or other approved certification.

Note: A chief executive, agency head or delegate may also approve an application by an employee for leave without pay due to illness or injury, subject to the provision of an appropriate medical certificate or other approved certification, without requiring the employee to exhaust their sick leave credit.

Before granting leave without pay in respect of the absence from duty by an employee as a result of illness or injury, a chief executive, agency head or delegate must be satisfied that the employee will be able to resume duty in the foreseeable future. If this is not the case, the chief executive should have regard to the PS Act section 56 'Power to require medical examination' and/or seek Human Resources or legal advice.

Effect of leave without pay (due to illness or injury) on accrual of leave entitlements

Where a period/s of absence on leave without pay by an employee does/do not exceed the equivalent of one calendar month of service in a service year, referred to as a "grace period", the period/s of absence will count as effective service for the accrual of leave entitlements.

Where a period/s of absence on approved leave without pay by an employee, supported by a medical certificate or other certification, exceeds the equivalent of one calendar month and is for a period of up to 12 months in a service year, the period in excess of the equivalent of one calendar month will not count as effective service for the purposes of accruing long service leave and retention leave entitlements, but will count as service for the purpose of accruing recreation leave and sick leave entitlements.

If the period of leave without pay (due to illness or injury) straddles an employee's service year anniversary, service or effective service does not recommence until the employee resumes duty. For this purpose, "resumes duty" means a physical return to work but does not include a paid full day public holiday, a flexi day, rostered day off or a day of paid leave.

For the purposes of this Determination, the equivalent of one calendar month (i.e. “grace period”) means:

- for a full-time employee working 5 days per week – the number of hours normally worked during 22 working days
- for employees on flexible working arrangements – the number of hours normally worked in an average calendar month with 22 working days.

14. COVID-19 ARRANGEMENTS

The below provisions set out minimum standards for COVID-19 related scenarios. Agencies may have additional policies which have been developed in context of their specific workplace/s.

Absence due to COVID-19

An employee who tests positive for COVID-19 will be entitled to access their existing sick leave entitlements in line with agency requirements. On a case-by-case basis, the employee may request and be permitted to work from home if they are mildly symptomatic but otherwise remain well and appropriate duties are available.

Requirement for employees to self-report

Employees are required to notify their employer if they are a close contact, or if they test positive for COVID-19. Such employees must comply with any direction from a health authority, which may or may not include remaining absent from the workplace. Working from home may be permitted if the employee cannot attend work but remains well and suitable duties are available.

Vulnerable employees

Employees meeting the definition of vulnerable as established by [ATAGI](#) or [SA Health](#) should seek advice from their medical practitioner to understand what work arrangements may be necessary.

Such employees may request to work flexibly, with such a request to be supported by an agency where practical and appropriate, and where the request does not impact service delivery. An individual risk assessment should be conducted to determine what arrangements may suit the circumstances.

Where working flexibly is not possible, the employee can seek to access their individual leave entitlements (sick leave if appropriate, or recreation leave, long service leave or retention leave) if they do not wish to remain in the workplace.

Regular PCR testing required in line with a relevant direction

Where the duties carried out by an employee require regular COVID-19 PCR testing under a relevant health direction, any period waiting in line to be tested will be treated as paid work time, including reasonable travel time from their home or workplace to the testing facility.

If required testing falls on a non-workday the employee will be paid the appropriate rate for the minimum hours of engagement under the relevant industrial instrument.

If required testing falls during a period of leave the employee will be re-credited one full day of the applicable leave for each day they are required to undergo testing.

Evidence of testing may be required by the agency prior to the recrediting of leave.

Special Leave with Pay for COVID-19 related absences

Special leave with pay for COVID-19 related absences is available. See section F *Special Leave With Pay and Leave Without Pay*.

Attending COVID-19 vaccination appointments

Public sector employees will be encouraged and supported to receive their vaccination where possible to help protect the community against COVID-19. Where a vaccination appointment is scheduled during an employee's normal or rostered working hours, that employee will be entitled to attend in paid work time, including reasonable travel time.

Employees are required to consider the reasonable business needs of their employer when scheduling a vaccination appointment, particularly any impact the appointment may have on maintaining frontline service delivery. Employees must therefore negotiate such appointment times in advance with their manager and comply with any reasonable and lawful directions they receive from their manager on this issue.

Section C

Recreation Leave

An employee (other than a casual employee) is entitled to recreation leave in accordance the PS Act (see section 51 and clause 5 of Schedule 1) and the PS Regulations (see regulation 21) and this Determination.

An employee is entitled to 1 and 2/3 days recreation leave for each completed month of service.

For the purposes of this Determination “recreation leave” is used interchangeably with “annual leave” and if an applicable industrial instrument refers to “annual leave”, that will be taken as a reference to “recreation leave”.

All recreation leave previously accrued and not taken by an employee up to the date of commencement of this revised Determination will remain unchanged.

1. RECREATION LEAVE ACCRUAL

An employee (other than an employee rostered to work over seven days per week (refer to the section below), or a casual employee) who works 37.5 hours per week accrues and is credited with recreation leave in hours at a rate equivalent to 12.5 hours recreation leave for each completed month of service.

For the purposes of recreation leave, a service year commences on the date of employment as a public sector employee and each subsequent anniversary of this date (excluding an employee who has prior service as a casual employee). Service years for recreation leave are not altered by leave without pay (though entitlements may be reduced). Refer to Section G - Recognition of Prior Service for information on the impact of prior service on service years for recreational leave purposes.

Recreation leave is to be calculated, recorded and taken in working hours. An employee, including an employee in their first year of service, is entitled to take recreation leave which has accrued and been credited on the basis of completed months of service.

It should be noted that it is a fundamental principle of recreation leave that an employee is entitled to 4, 5 or 6 calendar weeks (as provided through an industrial instrument) away from the workplace for rest and recuperation during a service year.

For the purposes of this Determination, references to “the equivalent of days, weeks, months or years” means the equivalent number of hours normally worked by a full-time employee during such period.

Casual Employees

Casual employees do not accrue and are not entitled to take recreation leave.

Employees rostered over seven days per week

An employee who is regularly rostered to work on active duties in ordinary hours on Saturdays, Sundays and public holidays (including at least half the Sundays and Public Holidays occurring in a year), accrues and is credited with recreation leave at the rate of the equivalent of 15.625 hours of recreation leave for each completed month of their service (equivalent to 25 working days per service year).

2. TAKING RECREATION LEAVE

Recreation leave may only be granted to an employee after they have made application to a chief executive, agency head or delegate in a form approved by the agency. The granting of such leave is subject to organisational convenience and the requirements of this Determination.

If urgent recreation leave is sought due to family and domestic violence all reasonable steps will be taken to facilitate the approval of such application. Please also refer to Section F (Special Leave With

Pay and Leave Without Pay) of this Determination for information about the entitlement to paid family and domestic violence leave.

No recreation leave may be taken by an employee in advance of an entitlement accruing, except if required to cover closure of offices by the Minister responsible for the PS Act (refer to Part 5 Closure of workplaces).

In accordance with regulation 21 of the PS Regulations, recreation leave must be applied for and granted so that the employee's recreation leave entitlement for a service year is taken before the end of the following service year, unless the employee applies to carry over such leave into the next service year and a chief executive, agency head or delegate approves such application.

A chief executive, agency head or delegate may approve an application by an employee to accrue and carry forward any amount of accrued recreation leave for a maximum of 24 months after its accrual. Deferral for a longer period may only occur in the most exceptional cases.

If a chief executive, agency head or delegate and employee fail to agree on the time for taking recreation leave, or part of it, a chief executive, agency head or delegate may require (direct) the employee to apply for and take recreation leave by giving the employee notice of the requirement at least 2 weeks before the period of recreation leave is to begin.

If an employee refuses or fails to apply for and take recreation leave as required, the chief executive or delegate may direct the employee to take that leave.

A "service year" means the period of 12 months from the commencement of the employee's service in the public service or any of the succeeding periods of 12 months, subject to any variations as required by this Determination.

An employee is regarded as having taken recreation leave during a service year if the leave or any remaining balance of the leave is taken in a continuous period commencing before or at the end of that service year.

Employees may take recreation leave in single day periods for the purposes of family carer's leave (refer Section B – Sick Leave, Part 12 Family Carer's Leave). An employee is entitled to up to 10 days in any completed year of service for this purpose (pro rata for part time employees).

3. REMUNERATION DURING RECREATION LEAVE

While absent on a period of recreation leave, an employee is entitled to be remunerated at the rate of their normal salary (refer to Glossary for definition of "normal salary") they would have received while working, together with the following allowances:

- Whyalla cost of living allowance
- qualification, proficiency and skill allowances (including first aid allowance) but is not to be included in the remuneration upon which the recreation leave loading is calculated
- locality allowance, but the locality allowance is not to be included in the remuneration upon which the recreation leave loading is calculated
- additional duties allowances if it is intended that the additional duties will continue to be performed when the employee returns from recreation leave
- other allowances if specific approval has been given for payment during recreation leave.

Payment in Advance

Before commencing recreation leave, an employee may request to be paid their normal salary (together with allowances as outlined above) that would otherwise have been paid to them on paydays occurring during the leave.

4. RECREATION LEAVE LOADING

Payments of the leave loading will be made in amounts proportionate to the actual period of recreation leave taken.

Employees other than shift workers and employees rostered over 7 days

The *Public Service (Recreation Leave Loading) Award* provides that an employee is entitled to be paid a recreation leave loading based on the normal salary of the position, role or duties to which the employee is appointed or assigned at the time of taking the leave, or the allowances and penalties payable had the employee not been on leave during the relevant period, whichever is the greater. The maximum amount for recreation leave loading payable is prescribed in the Award and is varied on an annual basis.

Shift workers and employees rostered over 7 days

An employee who is employed as a shift worker or is a seven-day week worker (defined as an employee who is working rotating shifts on seven days a week, or who is rostered to work regularly on active duties in ordinary hours on Saturdays, Sundays and public holidays) is entitled to the recreation leave loading that is prescribed in the *Public Service (Recreation Leave Loading) Award* for such workers, or the allowances and penalties payable had the employee not been on leave during the relevant period, whichever is the greater. The maximum amount for recreation leave loading payable is prescribed in the Award and is varied on an annual basis.

Part time employees

Recreation leave loading is to be calculated and paid to part time employees pro rata (based on their normal working hours relative to full-time working hours).

Employees purchasing leave

Recreation leave loading is paid at the full rate as per employees performing similar positions, roles or duties not on purchased leave arrangements, not at the employee's reduced fractional rate as part of the purchased leave arrangement. Recreation leave loading does not apply to periods an employee is absent upon utilising purchased leave.

5. CLOSURE OF WORKPLACES

The Minister responsible for the PS Act may direct that all or any of the workplaces of employees of a public sector agency be closed and that specified classes of employees not be required to work on a specified day or days (for example, the Christmas/New Year period). Employees not required to work during this period will be deemed to have been granted recreation leave for their normal working days in this period. This will apply even if no accrued leave is available on the basis of months worked. Leave taken in advance of accrued leave will be debited as soon as leave is subsequently accrued.

When applying for recreation leave at other times employees must make allowance for recreation leave which may be required over any period their office may be closed.

Employees who have applied for, and have been granted long service leave, retention leave, sick leave, special leave with pay or leave without pay for a period that includes the non-public holiday working days over the closure period are not subject to this requirement.

Alternatively, chief executives, agency heads or delegates may approve applications by employees to use time previously accrued under flexible working arrangements during this period instead of one or more days of recreation or other accrued leave.

6. PUBLIC HOLIDAYS

A full day public holiday occurring during a period of recreation leave is not to be treated as recreation leave and not to be debited from an employee's accrued entitlements.

7. PART TIME EMPLOYEES

Part time employees are entitled to the same period of recreation leave (i.e. 4, 5 or 6 calendar weeks) as full-time employees for rest and recuperation during a service year.

However, the number of paid hours of recreation leave is to be calculated at the rate payable to the employee for their actual hours worked had they not been on leave (including allowances that are expressed as being payable 'for all purposes' but otherwise excluding allowances, penalties or other additional payments). This means part time employees have a limited number of paid hours of leave available.

Part time employees are entitled to be absent from work for the full period of recreation leave (i.e. 4, 5 or 6 calendar weeks as appropriate) however if accrued paid leave is exhausted, such leave is to be unpaid. When an employee takes leave, the hours to be recorded as paid recreation leave are normally those hours which the employee would have worked if they had not been absent.

If an employee varies their fraction of time during a service year it is possible that the number of paid hours of recreation leave accrued by an employee during a service year may also change. In this situation, monies paid during periods of recreation leave are to reflect the employee's current hours of work.

8. EMPLOYEES PURCHASING LEAVE

An employee taking purchased leave in addition to other accrued entitlements to leave is to be treated as taking leave without pay for administrative purposes (refer to Section F – Special Leave With Pay and Leave Without Pay, Part 17 Effect of leave without pay for details of the impact of special leave without pay on recreation leave entitlements).

An employee cannot apply for recreation leave while they are absent from work on purchased leave. Purchased leave may be taken in conjunction with other leave (including recreation leave).

9. EMPLOYEES WORKING COMPRESSED WEEKS

A compressed weeks arrangement does not affect an employee's entitlement to a period of 4, 5 or 6 (as appropriate) calendar weeks of recreation leave. There is no minimum period of recreation leave applying to an employee on a compressed weeks arrangement.

The number of hours an employee would normally have worked on a particular day during a compressed weeks agreement must be recorded as recreation leave if the employee is on recreation leave for that day.

However, if the nominated day of non-attendance of an employee falls during a period of recreation leave, then no hours of recreation leave are recorded and no leave debited from their accrued entitlement relevant to that day, although the day will count towards the employee's entitlement of a period of 4, 5 or 6 (as appropriate) calendar weeks of recreation leave.

10. EMPLOYEES WORKING UNDER A FLEXI TIME ARRANGEMENT

During recreation leave, the hours an employee would normally have worked must be recorded on the relevant payroll system as recreation leave.

11. EMPLOYEES WORKING FROM HOME

An employee's entitlement to recreation leave is unaffected by a working from home arrangement.

12. OUTSIDE EMPLOYMENT ETC DURING RECREATION LEAVE

An employee absent from duty on any form of leave remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and therefore must have authorisation to engage in outside employment or other remunerative activity.

Section D

Long Service Leave

1. LONG SERVICE LEAVE ENTITLEMENT

Long service leave entitlements for Public Service and specified public sector employees are provided in Part 6 Clauses 7, 8 and 9 of Schedule 1 of the PS Act and regulations 23 and 24 of the PS Regulations.

Note: Regulation 13 operates to apply Schedule 1 Part 6 to specified public sector employees.

All long service leave previously accrued and not taken by an employee up to the date of commencement of this Determination will remain unchanged.

For the purposes of long service leave, effective service normally commences on the date of employment of a person as a public sector employee (except where a period of prior service has been recognised or there has been a break in service). A year of effective service normally ends at the end of the day before the anniversary of this date, except if it has been extended by a period of leave without pay, which is determined not to count as effective service (refer to Section G - Recognition of Prior Service for information on the impact of prior service on effective service for long service leave purposes).

An employee who has 7 years or more effective service is entitled to the following long service leave - 9 calendar days in respect of each completed year of effective service.

Prior to 1 July 2011, the PS Act provided for an employee to accrue long service leave on the basis of 15 calendar days in respect of their 16th and each subsequent year of effective service. However, if an employee commenced employment prior to 1 July 1986, for effective service up to and including 30 June 1986 the long service provisions of the repealed *Public Service Act, 1967-81* is applicable. Refer to Appendix 1 for further information.

If long service leave has been taken by an employee or a payment in lieu of long service leave has been made to an employee, the employee's entitlement to long service leave is reduced accordingly.

Casual employees

Casual employees accrue and are entitled to take long service leave provided they meet the requirements for effective service.

Effective service includes service if an employee is not actually working but where there is a continuing relationship between the employee and a chief executive or agency head on behalf of the Crown as employer.

Such a relationship does not necessarily need to be evidenced in writing.

Note that a period of more than 3 months (other than for parenting purposes) between periods of paid employment during such a relationship is considered to be a break in service, and the service prior to such a break will not be considered as effective service for the purposes of accruing future long service leave. If such a break in service occurs, the employee must receive payment in lieu of the long service leave which they may have accrued up until the end of the last period of paid employment before the break in service occurred.

Note that a period of paid employment commences on the first day of employment in the period and ends on the last day of employment of the period – it is not based on when the employee was paid.

Note also that if a casual employee in an "as and when required" casual employment arrangement does not work due to parenting purposes, the relevant period is not considered a break in service (refer to Section F - Special Leave With Pay and Leave Without Pay, Part 15 Parental leave), however the period of the suspension of the casual employment arrangement is not considered as effective service.

The number of paid hours during a period of long service leave and options for payment for a casual employee are the same as those applying to part time employees.

2. PUBLIC SECTOR EMPLOYEES WITH PS ACT LONG SERVICE LEAVE PROVISIONS

Pursuant to regulation 13 of the PS Regulations, the long service leave provisions of the PS Act also apply to the following public sector employees:

- police officers
- employees of the South Australian Fire and Emergency Services Commission, South Australian Metropolitan Fire Service, South Australian Country Fire Service or South Australian State Emergency Service
- public sector employees covered by the *South Australian Metropolitan Fire Service Enterprise Agreement 2011* (or any enterprise agreement made in substitution for that enterprise agreement)
- officers of both Houses of Parliament and persons under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or under their joint control (other than a person appointed to an office under the *Parliament (Joint Services) Act 1985*)
- persons employed by the Crown in a public office under an Act and who do not have an entitlement to long service leave under that Act or under their conditions of employment (other than a person appointed to judicial office, a person who is remunerated solely by fees, allowances or commission or a person employed by a statutory corporation)
- an employee of the then Land Management Corporation, if immediately before the commencement of the regulations, Part 7 division 3 of the *Public Sector Management Act 1995* applied to the employee.

Regulation 13(1a) also provides that the long service leave provisions of clause 7(1) and (2)(a) of Schedule 1 of the PS Act will also apply from 1 July 2011, to:

- persons employed under section 72 of the PS Act
- without limiting section 72 of the PS Act, persons employed in the position of Assistant or Research Officer to a Member of Parliament
- persons employed by the WorkCover Corporation of South Australia (now Return to Work Corporation of South Australia) pursuant to Part 5 of the *WorkCover Corporation Act 1994* (*Return to Work Corporation of South Australia Act 1994* from 2 February 2015).

Regulation 13(2a) of the PS Regulations provides that Part 7 of the PS Act applies to an employee of the chief executive of TAFE SA under the *TAFE SA Act 2012* employed on or after 1 November 2012 if –

- a) the employee is employed in duties that, on 1 November 2012, are classified in a classification contained in –
 - i the *S.A. Public Sector Salaried Employees Interim Award* (or any award made in substitution for that award);
 - ii the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012* (or any enterprise agreement made in substitution for that enterprise agreement);
- b) the employee is employed in executive level administrative duties.

Regulation 13 of the PS Regulations provides that Part 7 of the PS Act applies, with some modification as prescribed in the regulations, in relation to:

- employment in the Education and Early Childhood Services Registration and Standards Board of South Australia under *the Education and Early Childhood Services (Registration and Standards) Regulations 2011* employed on or after 1 July 2013
- employment in the Lifetime Support Authority of South Australia under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* employed on or after 1 February 2014
- an employee of the Legal Profession Conduct Commissioner under the *Legal Practitioners Act 1981* employed on or after 1 July 2014.

Employees in the public health sector (apart from Public Servants employed in the “head office” of the Department for Health and Wellbeing and those covered by Part 7 of the PS Act from 1 July 2016) derive their entitlements to long service leave under clause 2 of Schedule 3 to the *Health Care Regulations 2008*. Clause 2 continues the operation of a proclamation made under section 59 of the repealed *South Australian Health Commission Act 1976*. That proclamation extended public service long service leave entitlements to employees in the public health sector not employed under Part 7 of the PS Act.

A proclamation made pursuant to section 64(2) and (3) of the *Statutes Amendment (Budget 2010) Act 2010* specified that clause 26.1.3 of the *SA Health Visiting Medical Specialists Enterprise Agreement 2009* and clause 12 of the *SA Ambulance Service Enterprise Agreement 2007*, which relate to long service leave, no longer apply from 1 July 2011 and that from 1 July 2011, the accrual of long service leave will occur in accordance with clause 7(1) and (2)(a) of Schedule 1 of the PS Act.

To determine whether the provisions apply to an employee of the Crown, clarification can be sought from the applicable Human Resources in an agency. Reference will need to be made to the legislation covering conditions of employment in each case.

3. APPLYING FOR AND TAKING LONG SERVICE LEAVE

Long service leave may only be granted to an employee on application made to the chief executive, agency head or delegate of a public sector agency in a form approved by the public sector agency. Employees cannot be directed to apply for and take long service leave. However, a chief executive, agency head or delegate should ensure that there is a planned approach to long service leave, which allows equitable access to the entitlement by employees, and encourages the taking of long service leave.

If urgent long service leave is sought due to family and domestic violence all reasonable steps will be taken to facilitate the approval of such application. Please also refer to Section F (Special Leave With Pay and Leave Without Pay) of this Determination for information about the entitlement to paid family and domestic violence leave.

Minimum period of long service leave

Employees can take large blocks of long service leave or use shorter periods to support more flexible working arrangements.

Long service leave may be applied for and taken in calendar days for periods of at least seven days or in working days for periods less than seven days.

Leave of at least seven calendar days

When an employee applies for and is granted a period of long service leave of at least seven calendar days, the period of long service leave must commence on the first normal working day of absence and continue up to, but not including, the day on which the employee resumes duty, or commences other leave. Every day occurring during a period of long service leave (whether it is a working day or not) is to be regarded as a day of long service leave.

Example: An employee applying for seven calendar days long service leave for the period Monday 7 January to Sunday 13 January, returning to work on Monday 14 January, will need to record Monday 7 January as the first day of absence and Sunday 13 January as the last day of absence on the leave application form.

Leave of less than seven calendar days

If an employee applies for and is granted long service leave for a period of less than seven calendar days, the appropriate conversion from calendar days to working days should be made, viz 1 standard working day is equal to 1.4 calendar days for long service purposes. If an employee does not work a standard work day, the appropriate conversion from the calendar day equivalent should be made in hours.

When applying for a period of long service leave less than seven calendar days, each working day is treated as a single stand-alone day.

Example: Assuming a normal Monday to Friday working week – An employee applying for two days long service leave on Friday 11 January and Monday 14 January, returning to work on Tuesday 15 January, will need to record Friday 11 January as a long service day and Monday 14 January as a long service leave day on the leave application form.

Note: In the above example, if the two days are standard working days (of 7.5 hours per day) they are deducted as 1.4 calendar days each (total of 2.8 calendar days) as per the conversion detailed above. If the two days are non-standard working days, the appropriate conversion from the calendar day equivalent should be made in hours (as detailed in the section on “Employees Working Compressed Weeks”).

4. REMUNERATION DURING LONG SERVICE LEAVE

During a period of long service leave an employee is entitled to be paid at the rate of their normal salary (adjusted as required by this Determination for part time employees) and the following allowances (if applicable):

- Whyalla cost of living allowance
- locality allowance
- qualification, proficiency and skill allowance (including first aid allowance)
- additional duties allowance if it is intended that the additional duties will continue to be performed when the employee returns from long service leave
- casual loading if applicable.

Payment in advance

An employee who applies for and is granted long service leave may request to be paid the total remuneration which would be payable on paydays during that leave on the payday prior to the leave being taken.

5. EXTENDED LONG SERVICE LEAVE

An employee may apply to take extended long service leave (also known as long service leave on half pay). In that event the period of leave is to be twice the period to which the employee would otherwise have been entitled.

Applications for extended long service leave must be for an even number of days.

The first half of a period of extended long service leave is treated as long service leave and the employee is paid their normal salary plus relevant allowances that are payable during a period of leave. The second half of the period is to be recorded and treated as leave without pay, both for the purposes of salary and determination of the accrual of leave entitlements. For administrative purposes only, if requested by an employee, an agency will make arrangements to spread the payment of salary due in the first half of the leave over the entire period of the extended long service leave.

6. PAYMENT OF LEAVE UPON TRANSFER OR ASSIGNMENT TO A LOWER REMUNERATION

This provision only applies when an employee has been transferred to duties or a role or a position at a lower remuneration level as a result of the inability to perform duties at the higher level due to mental or physical incapacity, or as a result of them being excess to requirements.

The salary payable during long service leave, or payment in lieu of long service leave during service or upon termination, relating to service prior to the transfer must be equivalent to the salary the employee would be receiving if the employee had remained at the higher remuneration level.

This provision does not apply if an employee has been transferred to duties or a role or a position at a lower remuneration level as a consequence of unsatisfactory performance or disciplinary processes.

7. PART TIME EMPLOYEES

If part time or casual service forms part of an employee's effective service, the employee must determine which of the following methods will be used as the basis for payment of salary and allowances during the period of long service leave:

- paid leave available in hours
- calendar days paid on a full-time basis.

Each method is available to an employee on each occasion the employee applies for long service leave. Relevant agencies must explain the two methods to employees with part time or casual service and employees must choose one method.

Note that examples of calculations of long service leave for employees with part time or casual service are given in Appendix 2.

Remuneration for part time employees

Employees have the same number of calendar days of long service leave as full-time employees based on the length of effective service. However, the amount of paid leave available is calculated on the basis of the hours they would have worked had they attended for duty.

Common calculation methods for the amount of paid leave include the average hours worked by the employee over their effective service, or current working hours.

Employees may nominate a number of working hours per week to be paid during the leave up to and including the number normally worked by a full-time employee; noting that if they elect to be paid in addition to the equivalent of their normal working hours had they attended for duty, their entitlement to be remunerated during a period of absence on long service leave will be reduced or may be exhausted prior to their entitlement to a number of calendar days and their entitlement to be remunerated during future periods of long service leave will be affected accordingly.

Alternatively, if an employee nominates a number of remunerated hours less than the average number of working hours during their effective service, then at some time their calendar days of long service leave may be exhausted before their entitlement to paid hours of leave. An employee in this situation will not be able to access these paid hours of leave until such time as the employee has completed another year of effective service or they have an entitlement to be paid for the value of the leave if their employment is terminated.

8. EMPLOYEES PURCHASING LEAVE

Purchased leave may be taken in conjunction with other leave (including long service leave). However, purchased leave is not to be granted immediately after a period of long service leave and immediately prior to a further period of long service leave.

During periods of absence pursuant to a purchased leave arrangement, employees are considered to be absent on leave without pay. Refer to Section F - Special Leave With Pay and Leave Without Pay, Part 10 Effects of leave without pay.

9. WORKING COMPRESSED WEEKS

A period of long service leave of at least 7 calendar days must commence on the first normal working day of absence and continue up to, but not including, the day on which the employee resumes duty, or commences other leave.

Every day occurring during a period of long service leave of at least 7 calendar days (whether it is a normal working day, normally a nominated day off, or other day which is not normally a working day) is to be regarded as a day of long service leave.

If an employee working on a compressed weeks arrangement applies for a single day of long service leave if they would usually work a standard day, their single day's leave should be debited from their accrued entitlement as 1.4 calendar days. If the single day of long service leave constitutes a non-standard working day, the appropriate conversion from the calendar day equivalent should be made in hours.

Example: An employee working on a compressed weeks arrangement applying for a single day's long service leave on a non-standard working day of 9 hours will have $1.4 \text{ calendar days} \times 9 \text{ hours} / 7.5 \text{ hours} = 1.68 \text{ calendar days}$ debited.

10. EMPLOYEES WORKING UNDER A FLEXI TIME ARRANGEMENT

The number of calendar days taken and working hours paid during long service leave must be recorded on the relevant payroll system regardless of whether an employee is working under a flexi-time arrangement or not.

11. OTHER TYPES OF LEAVE DURING LONG SERVICE LEAVE

A period of long service leave must not be split or interrupted for any reason other than sick leave (refer to Section B - Sick Leave), or recreation leave as outlined below.

An application by an employee for recreation leave is not to be approved for a period of recreation leave immediately after a period of long service leave and immediately prior to a further period of long service leave unless:

- the employee would otherwise be unable to take their accrued recreation leave entitlements as required by this Determination, or
- it is required to cover an employee's continued absence after all current long service leave entitlements have been exhausted and pending the accrual of further entitlements.

12. MISCELLANEOUS MATTERS

Programmed days off or public holidays

If a programmed day off or a public holiday, including a part-day public holiday (refer: *Holidays Act 1910*), falls in a period of long service leave, then the period of long service leave is unaffected and must not be extended by a day/s nor must another day be substituted for the programmed day off or public holiday.

Resumption of duty during long service leave

In some circumstances an employee may, with the approval of a chief executive, agency head or delegate resume duty before the end of the period of approved leave. The unused balance of approved long service leave may be taken at a later time mutually agreed between the employee and the chief executive, agency head or delegate without further approval being required.

If the employee has received payment in advance of long service leave, then the employee must not be paid again until the original period of the leave has ended.

13. OUTSIDE EMPLOYMENT ETC DURING LONG SERVICE LEAVE

An employee absent from duty on any form of leave remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and therefore must have authorisation to engage in outside employment or other remunerative activity.

APPENDIX 1: LONG SERVICE LEAVE ACCRUED PRIOR TO 1 JULY 1986

The former *Government Management and Employment Act 1985* provided for an employee to accrue long service leave on the basis of fifteen days in respect of their 16th and each subsequent year of effective service. If an employee was engaged prior to 1/7/1986, for effective service up to and including 30/6/1986 the long service leave provisions of the repealed *Public Service Act, 1967-81* were applicable. The following information summarises an employee's entitlement to long service leave under the repealed *Public Service Act* in relation to accrual of leave on the basis of 15 days per year.

1. An increase in long service leave entitlement from 9 calendar days to 15 calendar days is applicable in relation to an employee's 16th or any subsequent year of effective service which commenced on or after 1/7/75.

Note: the entitlement to accrue 15 calendar days of long service leave in relation to an employee's 16th or subsequent year of effective service ceased on 1 July 2011.

2. If an employee's 16th or subsequent year of effective service commenced prior to but including 1/7/75, an apportionment is required to determine the employee's entitlement for that year of service - refer to table below (in effect this is only required if an employee's date of entry for long service leave purposes commenced on or before 1/7/60).

Leave entitlements for the 1974-75 year are as follows:

Commencement of 16th or subsequent year of effective service	Number of calendar days leave to be credited for that year
1/7/74 - 31/7/74	9
1/8/74 - 30/9/74	10
1/10/74 - 31/11/74	11
1/12/74 - 29/1/75	12
30/1/75 - 31/3/75	13
1/4/75 - 31/5/75	14
1/6/75 - 30/6/75	15

APPENDIX 2: CALCULATION OF LONG SERVICE LEAVE ENTITLEMENTS AND PAYMENT FOR EMPLOYEES WITH PART TIME SERVICE

The following examples relate to an employee with an effective service date of 12/3/1996 and who wishes to take long service leave commencing 23/2/2015.

The employee has completed more than ten years effective service (18 years on 11/3/2014). The employee has also completed an additional 11 months of service between 12/3/2014 and 11/2/2015, but this does not count towards long service leave unless the employee's employment is terminated and receives a payment for the value of the accrued entitlement.

The employee worked 37.5 hours per week from commencement until 21/5/2005 where they commenced part time work at 22.5 hours per week. From 6/10/2012 the employee's part time hours increased to 30 hours per week.

The employee has the same number of calendar days of long service leave relative to their effective service as a full-time employee; however, the amount of paid leave available is calculated on the basis of the hours they would have worked had they attended for duty.

Prior to 1 July 2011, an employee accrued an entitlement to long service leave at the rate of 9 calendar days for each completed year of effective service for the first 15 years of service and 15 calendar days for each subsequent completed year of service.

Effective from 1 July 2011, the rate of accrual for all effective service is 9 calendar days for each completed year of effective service (refer: *Statutes Amendment (Budget 2010) Act 2010*).

*Where an employee has, before 1 July 2011, completed at least 15 years of service, any completed month of effective service occurring before 1 July 2011 will give rise to an entitlement to 1.25 days of long service leave for each such month. Calculation of a long service leave entitlement at the pre-July 2011 rate of accrual will apply dependent on the length of effective service by the employee during the period between the date in June 2011 of the employee's completed month and 30 June 2011 (See *Commissioner's Determination 3 – Accrual of Long Service Leave* in June 2011). Subject to that entitlement and from 1 July 2011, long service leave for the balance of that particular year of effective service will accrue at the rate of 0.75 days for each completed month of service.

Number of Calendar Days Accrued from 13/3/1996 to 11/3/2014:

- 12/03/1996 to 11/03/2011 employee accrued 135 days (15 years x 9 days)
- 12/03/2011 to 30/06/2011 employees accrued 4.5 days (3.6 months x 1.25 days)*
- 1/07/2011 to 11/03/2012 employee accrued 6 days (8.4 months x 0.75 days)*
- 12/03/2012 to 12/03/2014 employee accrued 18 days (2 years x 9 days) Total entitlement to LSL as of 12/03/2014 is 163.5 calendar days

Method 1 – Paid leave available in hours

The remuneration payable during a period of long service leave accrued for each period of service at a different proportion of time worked is calculated by summing the result of the following formulae for each separate period of service.

Number of months at proportion of hours for that period		No. of days accrued per year of service		No. of hours worked per week		Hours accrued for that period
_____	x	_____	x		=	
12 (months)		Calendar days in a week (7)				

Which is the sum of:

12/3/96 to 21/5/05 (110.3 months @ full-time 37.5 hours a week accruing at the rate of 9 days per year of service)

<u>110.3</u>	x	<u>9</u>	x	37.5	=	443.17
12		7				

22/5/05 to 11/3/11 (69.5 months @ part time 22.5 hours a week accruing at the rate of 9 days per year of service)

<u>69.5</u>	x	<u>9</u>	x	37.5	=	167.54
12		7				

12/3/11 to 30/06/11 (3.6 months @ part time 22.5 hours a week accruing at the rate of 15 days per year of service)

<u>3.6</u>	x	<u>15</u>	x	22.5	=	14.46
12		7				

1/7/11 to 5/10/12 (15.2 months @ part time 22.5 hours a week accruing at the rate of 9 days per year of service)

$$\frac{15.8}{213} \times \frac{9}{7} \times 22.5 = 36.64$$

6/10/12 to 11/3/14 (17.2 months @ part time 30.0 hours a week accruing at the rate of 9 days per year of service)

$$\frac{17.2}{12} \times \frac{9}{7} \times 30.0 = 55.29$$

Total available remuneration

$$= 443.17 + 167.54 + 14.46 + 36.64 + 55.29 = 717.1 \text{ hours}$$

This employee has an entitlement of 717.1 hours to be taken over 163.5 calendar days.

When an employee takes long service leave for a specified number of calendar days under Method 1:

- the number of calendar days of leave available is reduced by the number of calendar days taken
- the remuneration payable is reduced by the number of hours paid to the employee during the period of leave based on the number of working hours per week specified by the employee.

If the number of available paid working hours is exhausted before the end of the period of leave then the remaining leave shall be recorded as long service leave, however the employee is not remunerated during such period.

Method 2 – Calendar days on a full-time basis

The number of calendar days long service leave to be remunerated on a full-time basis is calculated by summing the number of calendar days accrued for period of service at a different proportion of time worked and/or different accrual rate using the following formulae for each separate period of service.

Number of months at same proportion of hours for that period and accrual rate	x	$\frac{\text{No. of days accrued each year}}{\text{No. of months in a year (12)}}$	x	$\frac{\text{No. of hours worked per week}}{\text{No. of hours worked per week by full-time employee}}$	=	Days accrued for that period
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Which is the sum of:

12/3/96 to 21/5/05 (110.3 months @ full-time 37.5 hours a week accruing at the rate of 9 days per year of service)

$$= 110.3 \times \frac{9}{12} \times \frac{37.5}{37.5} = 82.73 \text{ calendar days}$$

22/5/05 to 11/3/11 (69.5 months @ part time 22.5 hours a week accruing at the rate of 9 days per year of service)

$$= 69.7 \times \frac{9}{12} \times \frac{22.5}{37.5} = 31.28 \text{ calendar days}$$

12/3/11 to 30/6/11 (3.6 months @ part time 22.5 hours a week accruing at the rate of 15 days per year of service)

$$= 3.6 \times \frac{15}{12} \times \frac{22.5}{37.5} = 2.7 \text{ calendar days}$$

1/7/11 to 5/10/12 (15.2 months @ part time 22.5 hours a week accruing at the rate of 9 days per year of service)

$$= 15.2 \times \frac{9}{12} \times \frac{22.5}{37.5} = 6.84 \text{ calendar days}$$

6/10/12 to 11/3/14 (1 year and 5.2 months @ part time 30.0 hours a week accruing at the rate of 9 days per year of service)

$$= 17.2 \times \frac{9}{12} \times \frac{30.0}{37.5} = 10.32 \text{ calendar days}$$

Total calendar days available as per full-time employee for service up to 11/3/14

$$= 82.73 + 31.28 + 2.7 + 6.84 + 10.32 = 133.87 \text{ calendar days.}$$

When taking leave, the employee will be paid as per a full-time employee for each day of the leave, which would be paid for a full-time person taking leave over the same period.

Conversion from One Method to Another

An employee with part time service may elect either Method 1 or Method 2 each time long service leave is taken. If leave has previously been taken under one method and the employee now elects to take further leave under the other method, the following conversions should be used.

Conversion - Method 1 to Method 2

When some leave has been taken under Method 1 and an employee with a credit on the basis of Method 1 (i.e. a number of calendar days and a number of paid working hours) wishes to take leave on the basis of Method 2 the following conversion calculation must be used.

Number of calendar days of long service leave available on a full-time basis =

No. of paid working hours credit	x	7 (No. of calendar days in a week)	
7.5 (Normal hours worked by full- time employee in a day)		5 (No. of working days in a week for full-time employee)	

Conversion - Method 2 to Method 1

When some leave has been taken under Method 2 and an employee with a credit on the basis of Method 2 (i.e. a number of calendar days on a full-time basis) wishes to take leave on the basis of Method 1 the following conversion calculation must be used.

Number of calendar days of long service leave available =

No. of calendar days credit which would be available under Method 1 if no leave had been taken	—	Calendar days of long service leave taken under either Method 2 or Method 1
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Number of paid working hours of long service leave available =

Credit in calendar days under Method 2	x	7.5 (Normal hours worked by full-time employee in a day)	x	$\frac{5 \text{ (No. of working days in a week for full-time employee)}}{7 \text{ (No. of calendar days in a week)}}$
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Section E

Public Sector Skills and Experience
Retention Entitlement

The *Statutes Amendment and Repeal (Budget 2012) Act 2012* established a public sector “skills and experience retention leave entitlement” (“retention leave”) that came into effect on 1 July 2012 together with a transitional arrangement for 2011/2012.

Consequently, subject to the eligibility and accrual criteria specified in Part 6, Schedule 1 of the PS Act, from 1 July 2012, an “*employee who has completed 15 years of effective service (a long-term employee) is entitled to an additional amount of leave (a skills and experience retention leave entitlement) (that will be taken to constitute long service leave) for each completed month of effective service (being service as a long-term employee) ...*”.

The retention leave is to apply to public sector employees who have completed 15 or more years of effective service (“eligible employees”); and who are either:

- employed under the *Education and Children’s Services Act 2019, Parliament (Joint Services) Act 1985* or Part 7 of the PS Act, or
- subject to the long service leave entitlements provided in the PS Act, either as a result of regulation 13 of the PS Regulations or some other industrial instrument (i.e. an Enterprise Agreement).

Entitlements to retention leave are also determined in accordance with the PS Regulations and with proclamations published in the South Australian Government Gazette from time to time (see for example: *Public Sector (Budget 2012) (Skills and Experience Retention Leave) Proclamation 2012*; GG 6/12/2012, p. 5436).

1. RETENTION LEAVE ENTITLEMENT

An eligible employee is entitled to retention leave for each completed month of effective service as follows:

- for each month of effective service completed during the 2012/2013 financial year — $\frac{1}{6}$ working days leave
- for each month of effective service completed during the 2013/2014 financial year — $\frac{1}{4}$ working days leave
- for each month of effective service completed on or after 1 July 2014 — $\frac{1}{3}$ working days leave.

Transition 2011/2012: An employee who, during the 2011/2012 financial year had, or attained, 15 years of effective service, and was an employee on 1 July 2012 became entitled to an additional retention leave entitlement equal to $\frac{1}{6}$ working days leave for each month of effective service completed during that financial year.

The reference to “month” is to be applied by reference to the employee’s “service month” (refer to Glossary for definition of a “service month”).

Retention leave must be taken as a whole working day.

Examples of how retention leave is calculated for employees with full-time service are provided in Appendix 1.

2. PUBLIC SECTOR EMPLOYEES COVERED BY PS ACT RETENTION LEAVE PROVISIONS (“ELIGIBLE EMPLOYEES”)

Pursuant to regulation 13(1aa) of the PS Regulations the entitlement to retention leave will not apply to:

- any person who is bound by the *South Australian Police Enterprise Agreement 2011* (including before clause 34 of that Agreement comes into effect)
- any other person who is entitled under a determination of the Commissioner of Police to leave that corresponds to Police Service Leave under clause 34 of the *South Australian Police Enterprise Agreement 2011* (including a determination made before that clause comes into effect).

Regulation 13 of the PS Regulations provides for the retention leave provisions of the PS Act to apply to the following public sector employees:

- employees of the South Australian Fire and Emergency Services Commission, South Australian Metropolitan Fire Service, South Australian Country Fire Service or South Australian State Emergency Service
- public sector employees covered by the *South Australian Metropolitan Fire Service Enterprise Agreement 2011* (or any enterprise agreement made in substitution for that enterprise agreement)
- officers of both Houses of Parliament and persons under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or under their joint control (but not including persons appointed to offices under the *Parliament (Joint Services) Act 1985*)
- persons employed by the Crown in public offices under an Act and who do not have an entitlement to long service leave under that Act or under their conditions of employment (other than a person appointed to a judicial office, a person who is remunerated solely by fees, allowances or commission or a person employed by a statutory corporation)
- an employee of the then Land Management Corporation, if immediately before the commencement of the regulations, Part 7 division 3 of the *Public Sector Management Act 1995* applied to the employee.

Regulation 13(1a) of the PS Regulations also provides that the retention leave provisions of Schedule 1 of the PS Act will also apply to:

- persons employed pursuant to section 72 of the PS Act including persons employed in the position of Assistant or Research Officer to a Member of Parliament
- persons employed by the WorkCover Corporation of South Australia (now Return to Work Corporation of South Australia) pursuant to Part 5 of the *WorkCover Corporation Act 1994* (*Return to Work Corporation of South Australia Act 1994* from 2 February 2015).

Regulation 13 of the PS Regulations provides that the retention leave provisions of Schedule 1 of the PS Act will also apply to:

- an employee of the chief executive of TAFE SA under the *TAFE SA Act 2012* from 1 July 2012
- an employee of the Education and Early Childhood Services Registration and Standards Board of South Australia under the *Education and Early Childhood Services (Registration and Standards) Regulations 2011* employed on or after 1 July 2013
- an employee of the Lifetime Support Authority of South Australia under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* employed on or after 1 February 2014
- an employee of the Legal Profession Conduct Commissioner under the *Legal Practitioners Act 1981* employed on or after 1 July 2014.

Note: Employees in the public health sector (apart from public servants employed in the “head office” of the Department for Health and Wellbeing and those covered by Part 7 of the PS Act from 1 July 2016) derive their entitlement to retention leave as a consequence of their entitlement to long service leave pursuant to the PS Act. Refer to Section D – Long Service Leave.

3. APPLYING FOR AND TAKING RETENTION LEAVE

Retention leave may only be granted to an employee on application made to the chief executive, agency head or delegate of a public sector agency in a form approved by the public sector agency. Employees cannot be directed to apply for and take retention leave. However, a chief executive, agency head or delegate should ensure that there is a planned approach to retention leave, which allows equitable access by employees to such leave, and encourages the taking of retention leave.

If urgent retention leave is sought due to family and domestic violence all reasonable steps will be taken to facilitate the approval of such application. Please also refer to Section F (Special Leave With Pay and Leave Without Pay) of this Determination for information about the entitlement to paid family and domestic violence leave.

Retention leave is to be taken (depending on the amount of such leave accrued) as 1 or more whole working days of leave.

Remuneration during retention leave

During a period of retention leave an employee is entitled to be paid at the rate of their normal salary (adjusted as required by this Determination for part time employees) and the following allowances (if applicable):

- Whyalla cost of living allowance
- locality allowance
- qualification, proficiency and skill allowance (including first aid allowance)
- additional duties allowance if it is intended that the additional duties will continue to be performed when the employee returns from retention leave
- casual loading if applicable.

Payment in advance

An employee who applies for and is granted retention leave may request to be paid the total remuneration which would be payable on paydays during that leave on the payday prior to the leave being taken.

4. PAYMENT OF LEAVE UPON TRANSFER OR ASSIGNMENT TO A LOWER REMUNERATION LEVEL

This provision only applies when an employee has been transferred to duties or a role or a position at a lower remuneration level as a result of the inability to perform duties at the higher level due to mental or physical incapacity, or as a result of being excess to requirements.

The remuneration payable during retention leave, or payment in lieu of retention leave upon termination, related to service prior to the transfer must be equivalent to the salary the employee would be receiving if the employee had remained at the higher remuneration level.

This provision does not apply if an employee has been transferred to duties or a role or a position at a lower remuneration level as a consequence of unsatisfactory performance or disciplinary processes.

5. PART TIME EMPLOYEES

Part time employees will accrue retention leave at the same fraction of a working day for each month of effective service completed during the relevant financial year, however the number of hours paid leave available will be based on the proportion of hours worked. Examples of how retention leave is calculated for part time employees are provided in Appendix 2.

Retention leave must be taken as a whole working day. At the time of taking retention leave, a working day for a part time employee will mean the number of hours worked per day by the employee.

6. CASUAL EMPLOYEES

Casual employees are entitled to accrue and take retention leave provided they meet the requirements for effective service.

Effective service includes service if an employee is not actually working but where there is a continuing relationship between the employee and a chief executive, agency head or delegate as employer on behalf of the Crown.

Such a relationship does not necessarily need to be evidenced in writing.

Note that a period of more than 3 months (other than for parenting purposes) between periods of paid employment during such a relationship is considered to be a break in service, and the service prior to such a break will not be considered as effective service for the purposes of accruing future retention leave. If such a break in service occurs, the employee must receive payment in lieu of the retention leave which they may have accrued up until the end of the last period of paid employment before the break in service occurred.

Note that a period of paid employment commences on the first day of employment in the period and ends on the last day of employment of the period – it is not based on when the employee was paid.

Note also that a casual employee in an “as and when required” casual employment arrangement who does not work due to parenting purposes is not considered a break in service (refer to Section F – Special Leave With Pay and Leave Without Pay, Part 15 Parental Leave), however the period of the suspension of a casual employment arrangement is not considered as effective service.

Casual employees will accrue retention leave at the same fraction of a working day for each month of effective service completed during the relevant financial year, however the number of hours paid leave available will be based on the proportion of hours worked up to a maximum equal to that of a full-time equivalent (e.g. 37.5 or 38 hours per week). If a casual employee’s hours of work fluctuate during each effective service month, the amount of retention leave accrued during an effective service month will be

calculated using the hours worked by the employee during each effective service month up to a maximum equal to that of a full-time equivalent.

Retention leave must be taken as a whole working day. A working day for a casual employee for the purposes of retention leave is equal to that of a full-time equivalent (e.g. 7.5- or 7.6-hour working day).

Examples of how retention leave is calculated for casual employees are provided in Appendix 2.

7. EMPLOYEES WORKING COMPRESSED WEEKS

If an employee working on a compressed weeks arrangement applies for a single working day of retention leave, on a day where they would usually work a standard working day, their single day's leave should be debited from their accrued entitlements as 1 working day.

If the single day of retention leave is taken on a day that they would usually work more than a standard working day (e.g. would usually work 9 hours on the relevant day, where a standard working day is 7.5 hours) the relevant number of hours (9 hours) the employee would have worked for that day should be deducted from the employee's accrued retention leave hours.

Note retention leave is accrued based on working days. If an employee is working on a compressed weeks arrangement, retention leave should not be granted on a day that would not otherwise be a working day (i.e. a non-attendance day). For example, if a full-time employee is working on a compressed weeks arrangement under which they work 37.5 hours each week between Monday to Thursday, retention leave should not be granted on a Friday (non-attendance day).

8. EMPLOYEES WORKING UNDER A FLEXI TIME ARRANGEMENT

The number of working days taken and working hours paid during retention leave must be recorded on the relevant payroll system regardless of whether an employee is working under a flexi time arrangement or not.

9. LEAVE ENTITLEMENT NOT TAKEN WITHIN 5 YEARS

A retention leave entitlement that is not taken within 5 years of the end of the financial year in which it accrues will be lost (and a sum equal to the monetary value of any entitlement that is lost will not be payable).

In accordance with section 33(3) of the *Statutes Amendment and Repeal (Budget 2012) Act 2012* the loss of retention leave if not taken within 5 years of the end of the financial year in which it accrues is subject to a qualification that no retention leave entitlement will be lost before 1 July 2018.

For example, an eligible employee may have up to 4 working days retention leave entitlement at the conclusion of the 2012/2013 financial year (2 days accrued during 2011/2012, and 2 days accrued during 2012/2013). In the event that the employee has not taken the retention leave before 1 July 2018 then the 4 days retention leave will be lost.

10. ELECTION TO CONVERT ENTITLEMENT TO A MONETARY AMOUNT

Regulation 13(7) of the PS Regulations prescribes that an employee may, by election by 31 August immediately following the financial year in which an entitlement to retention leave accrues, convert the retention leave to an amount fixed by regulations. This means that an eligible employee may only make an election to convert the retention leave entitlement accrued in the previous financial year to a monetary amount between 1 July and 31 August (inclusive).

The election to convert retention leave to a monetary amount must be made for all of the entitlement accrued during the previous financial year, even if that entitlement includes a portion which is not equivalent to a whole working day.

Where an employee has taken a portion of the entitlement accrued during the previous financial year, they may convert the balance to a monetary amount during the period 1 July to 31 August of the following year. If the balance includes a portion of a whole working day, the payment will include a proportionate amount for that period.

For example, an eligible employee may have 7 days accrued at the conclusion of the 2013/2014 financial year (2 days accrued during 2011/2012, 2 days accrued during 2012/2013, and 3 days accrued during 2013/2014). Between 1 July and 31 August 2014 the employee may elect to convert the 3 days accrued during 2013/2014 to a monetary amount, but cannot convert the residual 4 days accrued in earlier financial years.

11. MISCELLANEOUS MATTERS

Programmed days off or public holidays

Retention leave is accrued and taken based on working days. Retention leave should not be granted on a programmed day off, a full day public holiday, or during the period of a part day public holiday.

Resumption of duty during retention leave

In some circumstances an employee may, with the approval of a chief executive, agency head or delegate resume duty before the end of the period of approved leave. The unused balance of approved retention leave may be taken at a time mutually agreed between the employee and the chief executive, agency head or delegate without further approval being required.

If an employee has received payment in advance of leave, then the employee must not be paid again until the original period of the leave has ended.

12. OUTSIDE EMPLOYMENT ETC DURING RETENTION LEAVE

An employee absent from duty on any form of leave remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and therefore must have authorisation to engage in outside employment or other remunerative activity.

APPENDIX 1: CALCULATION OF RETENTION LEAVE ENTITLEMENTS FOR EMPLOYEES WITH FULL-TIME SERVICE

When an employee takes retention leave the number of working hours of paid leave available is reduced by the number of hours paid to the employee during the period of leave.

If the number of accrued hours available do not equate to a whole number of working days the employee will not be able to access retention leave until such time as the employee has accrued sufficient hours equal to a whole working day or the employee ceases their employment.

Example 1:

The following example is for an employee who:

- is a full-time employee
- works 7.5 hours per working day
- has an annual service anniversary date (ASAD) of 15 April
- has 15 years of effective service prior to 1/7/11.

Note: This example is calculated for an employee who works full-time based on 37.5 hours per week. The balance of hours for retention leave will be different if an employee works full-time based on a 38- hour week

Date	Days Accrued	Running Balance (Days)	Equiv. Hrs	Balance (Hrs)
15/07/2011	1/6	1/6	1.25	1.25
15/08/2011	1/6	1/3	1.25	2.5
15/09/2011	1/6	1/2	1.25	3.75
15/10/2011	1/6	2/3	1.25	5
15/11/2011	1/6	5/6	1.25	6.25
15/12/2011	1/6	1	1.25	7.5
15/01/2012	1/6	1 1/6	1.25	8.75
15/02/2012	1/6	1 1/3	1.25	10
15/03/2012	1/6	1 1/2	1.25	11.25
15/04/2012	1/6	1 2/3	1.25	12.5
15/05/2012	1/6	1 5/6	1.25	13.75
15/06/2012	1/6	2	1.25	15
15/07/2012	1/6	2 1/6	1.25	16.25
15/08/2012	1/6	2 1/3	1.25	17.5
15/09/2012	1/6	2 1/2	1.25	18.75

15/10/2012	1/6	2 2/3	1.25	20
15/11/2012	1/6	2 5/6	1.25	21.25
15/12/2012	1/6	3	1.25	22.5
15/01/2013	1/6	3 1/6	1.25	23.75
15/02/2013	1/6	3 1/3	1.25	25
15/03/2013	1/6	3 1/2	1.25	26.25
15/04/2013	1/6	3 2/3	1.25	27.5
15/05/2013	1/6	3 5/6	1.25	28.75
15/06/2013	1/6	4	1.25	30
15/07/2013	1/4	4 1/4	1.875	31.875
15/08/2013	1/4	4 1/2	1.875	33.75
15/09/2013	1/4	4 3/4	1.875	35.625
15/10/2013	1/4	5	1.875	37.5

This employee has an entitlement of 37.5 hours as at 15/10/13 that must be taken as whole working days.

Example 2:

The following example is for an employee who:

- is a full-time employee
- works 7.5 hours per working day
- has an annual service anniversary date (ASAD) of 15 April
- has not reached 15 years of effective service until 15/4/12.

Note: This example is calculated for an employee who works full-time based on 37.5 hours per week. The balance of hours for retention leave will be different if an employee works full-time based on a 38- hour week.

Date	Days Accrued	Running Balance (Days)	Hours Accrued	Balance (Hrs)
15/07/2011	0	0	0	0
15/04/2012	0	0	0	0
15/05/2012	1/6	1/6	1.25	1.25
15/06/2012	1/6	1/3	1.25	2.5
15/07/2012	1/6	1/2	1.25	3.75
15/08/2012	1/6	2/3	1.25	5
15/09/2012	1/6	5/6	1.25	6.25
15/10/2012	1/6	1	1.25	7.5
15/11/2012	1/6	1 1/6	1.25	8.75
15/12/2012	1/6	1 1/3	1.25	10
15/01/2013	1/6	1 1/2	1.25	11.25
15/02/2013	1/6	1 2/3	1.25	12.5
15/03/2013	1/6	1 5/6	1.25	13.75
15/04/2013	1/6	2	1.25	15
15/05/2013	1/6	2 1/6	1.25	16.25
15/06/2013	1/6	2 1/3	1.25	17.5
15/07/2013	1/4	2 4/7	1.875	19.375

This employee has an entitlement of 19.375 hours as at 15/07/13 that must be taken as whole working days.

APPENDIX 2: CALCULATION OF RETENTION LEAVE ENTITLEMENTS AND PAYMENT FOR EMPLOYEES WITH PART TIME AND CASUAL SERVICE AND CHANGES IN SERVICE

When an employee takes retention leave the number of working hours of paid leave available is reduced by the number of hours paid to the employee during the period of leave.

If the number of accrued hours available do not equate to a whole number of working days the employee will not be able to access retention leave until such time as the employee has accrued sufficient hours equal to a whole working day or the employee ceases their employment.

Example 1:

The following example is for an employee who:

- is a part time employee (0.8 equivalent)
- has an annual service anniversary date of 15 March
- has 15 years of effective service prior to 1/07/2011
- wishes to take retention leave commencing 23/10/13 (period of three days from Monday to Wednesday).

The number of working hours available to be paid for retention leave accrued for each period of service is calculated by summing the result of the following formulae for each separate period of service.

Number of hours per day for FT (e.g. 7.5 or 7.6 or 10 or 12) during the relevant month	X	Prescribed rate per month in relevant financial year (e.g. 1/4 for 2013/2014)	=	Number of hours leave accrued for an FTE employee for the month in the relevant financial year (e.g. 1.875 hrs August 2013)
Number of hours leave accrued for an FTE employee for the month in the relevant financial year	X	Equivalent PT (or equivalent casual hours per month) rate (e.g. 0.8)	=	Number of hours retention leave entitlement per month for PT
Number of hours retention leave entitlement per month for PT	X	Number of months at prescribed rate for the relevant financial year	=	Number of hours retention leave entitlement for relevant financial year

Which is the sum of:

15/7/11 to 15/6/13 (24 months @ part time 0.8 FT Equiv (30 hours a week))

$\frac{7.5}{6}$	= 1.25
1.25×0.8	= 1
1×24	= 24 hours

15/7/13 to 15/10/13 (4 months @part time 0.8 FT Equiv (30 hours a week))

<u>7.5</u>	= 1.875
4	
1.875 X 0.8	= 1.5
1.5 X 4	= 6 hours

Total available paid working hours = 24 + 6 = 30 hours

This employee has an entitlement of 30 hours that must be taken as whole working days.

Example 2:

The following example is for an employee who:

- is a part time employee (0.8 equivalent)
- has an effective service date of 15 April
- has reached 15 years of effective service prior to 1/7/11.

This example provides both the full-time balance and the part time (0.8 FTE).

Date	Days Accrued	Equiv. Hrs	FT Balance (Hrs)	PT 0.8 FTE (Equiv Hrs)
15/07/2011	1/6	1.25	1.25	1
15/08/2011	1/6	1.25	2.5	2
15/09/2011	1/6	1.25	3.75	3
15/10/2011	1/6	1.25	5	4
15/11/2011	1/6	1.25	6.25	5
15/12/2011	1/6	1.25	7.5	6
15/01/2012	1/6	1.25	8.75	7
15/02/2012	1/6	1.25	10	8
15/03/2012	1/6	1.25	11.25	9
15/04/2012	1/6	1.25	12.5	10
15/05/2012	1/6	1.25	13.75	11
15/06/2012	1/6	1.25	15	12
15/07/2012	1/6	1.25	16.25	13
15/08/2012	1/6	1.25	17.5	14
15/09/2012	1/6	1.25	18.75	15

15/10/2012	1/6	1.25	20	16
15/11/2012	1/6	1.25	21.25	17
15/12/2012	1/6	1.25	22.5	18
15/01/2013	1/6	1.25	23.75	19
15/02/2013	1/6	1.25	25	20
15/03/2013	1/6	1.25	26.25	21
15/04/2013	1/6	1.25	27.5	22
15/05/2013	1/6	1.25	28.75	23
15/06/2013	1/6	1.25	30	24
15/07/2013	1/4	1.875	31.875	25.5
15/08/2013	1/4	1.875	33.75	27
15/09/2013	1/4	1.875	35.625	28.5
15/10/2013	1/4	1.875	37.5	30

This employee has an entitlement of 30 hours that must be taken as whole working days.

Example 3:

In circumstances where an employee changes their work status (e.g. full-time to part time) during the course of an effective service month, an adjustment will be made to the accrual rate of retention leave. For example, if an eligible employee:

- who has an effective service date 5 April
- who has reached 15 years of effective service prior to 1/07/11
- changes from full-time work (based on a 37.5 hour week) to part time (30 hours per week) commencing part time on 16/08/13

then the following calculation below should be applied to the month during which the change in employment status occurs:

$$\frac{\text{number of hours retention leave for a FTE employee during the relevant month (e.g. 1.875 hrs August 2012)}}{\text{number of calendar days in the relevant calendar month (e.g. 31)}} = 0.06048 \text{ (portion of hours leave accrued per day for a FTE employee)}$$

Part 1 of Month: portion of hours leave accrued per calendar day for a FT employee (0.06048) X number of calendar days at FT during the relevant month (e.g. 11) = 0.66528 hrs.

Part 2 of Month: portion of hours leave accrued per calendar day for a FT employee (0.06048) X number of calendar days at PT (e.g. 20) = 1.2096, X PT equivalent status (e.g. 0.8) = 0.96768

Part 1 (0.66528) + **Part 2** (0.96768) = 1.63296 hours retention leave accrued for the relevant month. Note: the total amount of retention leave cannot exceed the maximum equal to a FT employee's hours for the relevant period.

Example 4:

The following example is for an employee who:

- is a casual employee
- has an effective service date of 15 April
- has reached 15 years of effective service prior to 1/7/11.

The amount of retention leave accrued during an effective service month for a casual employee will be calculated using the hours worked by the employee during each effective service month.

Retention leave must be taken as a whole day. A whole day for a casual employee for the purposes of retention leave is equal to that of a full-time equivalent employee (e.g. where an FTE works 37.5 hours per week as their base hours, a working day will be equal to 7.5 hours).

No of casual hours worked for the relevant month up to a maximum equal to an FT employee (e.g. 138 hrs.)	=	Equiv status of casual hrs. worked to that of an FT employee (e.g. 0.8 FTE)
No. of hours for the relevant month for an FT employee (e.g. 172.5)		

Equiv status of casual hrs. worked to that of an FT employee (e.g. 0.8 FTE)	X	Number of hours leave prescribed for each month in relevant financial year (e.g. 1/6 of an FT working day, 1.25 hrs.)	=	Number of hours retention leave for the relevant month
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This example demonstrates the retention leave accrual for an eligible casual employee who worked 103.5 hours during July 2012, and 138 hours during August 2012 where an FTE is 172.50 in the relevant months (e.g. 23 working days, over a 31-day calendar month).

Date	Leave accrual rate for month	Equiv status to FT	Leave accrued for month
15/07/2012	1/6 working days (1.25 hrs.)	0.6	0.75
15/08/2012	1/6 working days (1.25 hrs.)	0.8000	1.0000

Section F

Special Leave With Pay and Leave Without Pay

Note: Regulation 9(3) of the PS Regulations operates to apply the Special Leave With Pay component of Section F of this Determination to all agencies and employees covered by the *South Australian Public Sector Enterprise Agreement: Salaried 2021*.

The family and domestic violence leave component of Section F of this Determination applies to all public sector employment, as it reflects the entitlement under Schedule 3B of the FW Act. A Commissioner's determination otherwise applies to all public sector employment to the extent it relates to special leave with pay and is relevant to domestic/family violence leave, by reason of regulation 9(8) of the PS Regulations.

Flexible leave and working arrangements for public sector employees are provided in clause 1 of Schedule 1 of the PS Act and regulation 19 of the PS Regulations.

Regulation 19 states *"an employee of a public sector agency ... may be granted up to 15 days leave with pay in a 12-month period for special purposes ..."*

This Section establishes:

- which categories of special leave with pay will be approved and can exceed 15 days special leave with pay per service year
- which categories of special leave with pay may be approved subject to chief executive, agency head or delegate approval. This is a discretionary approval process exercised in accordance with the criteria set out in this document and is within the 15 days special leave with pay per service year.

Note: A casual employee of a public sector agency does not have an entitlement to special leave with pay, except in the case of family and domestic violence leave.

This Section also outlines what absences from the worksite or workplace are not considered to be special leave with pay but rather leave with pay; on duty; and/or an approved absence from the workplace. Such absences are not considered to be part of the 15 days special leave with pay allowance for special purposes.

Special leave with pay is applied for, taken and recorded in hours. Special leave with pay applies to part time employees on a pro rata basis in that the amount of days available would be proportionate to the full-time equivalent (FTE) of that employee. Special leave with pay is only paid for an employee's ordinary working day. Note that different rules apply for family and domestic violence leave, as explained in the family and domestic violence leave provisions below.

There are no categories of special leave with pay available to cover absences from the work site or work place because:

- the employee is attending professional development or approved training and development or study leave
- the employee has been suspended with pay or directed to remain absent from the workplace (as approved by the chief executive, agency head or delegate) as part of a disciplinary/investigation or fitness for work process
- the employee has been approved to travel and attend an interview (e.g. job interview) during work time for either the current agency or another agency. The time away from the employee's current work place is considered on duty and not special leave with pay
- the employee is attending a pre-retirement seminar conducted by Super SA. Attendance at the seminar will be subject to the operational requirements of the agency and if supported is considered on duty.

In the categories as outlined above, an employee is considered to be on duty and/or on an approved absence from the workplace and as such special leave with pay is not applicable.

There is no delegated approval from the Commissioner for Public Sector Employment to chief executives to nominate alternative categories of special leave with pay other than those categories as outlined in this Determination.

Consideration of an individual's performance must not form part of the decision-making process when considering whether an application for special leave with pay should be approved.

Requests for special leave with pay must be dealt with expeditiously and the decision must be clearly communicated to the employee. Where special leave with pay is not approved or approved with conditions, the reasons will be documented and provided to the employee.

All special leave with pay applications pursuant to the categories as outlined in Part 2 of this Section (“discretionary categories”) need to be considered on the particular circumstances and merits of each application. The period of special leave with pay may therefore vary from case to case. If appropriate, the chief executive, agency head or delegate should seek additional information before determining an application for special leave with pay, or recommend the employee utilise other paid leave entitlements. Special leave with pay is not to be considered as an extension of an employee’s paid sick leave entitlements.

Special leave with pay can be applied for and taken in hours and this needs to be identified by the employee on the application for special leave with pay.

An employee on a period of leave without pay has no entitlement to special leave with pay during the period of unpaid leave.

Over recent years the public sector has implemented changes to work flexibility, the method of leave accrual and minimum requirements for paid leave arrangements. This has resulted in a number of options available to the employee, the chief executive, agency head or delegate.

Depending upon the circumstances and service of the employee, the options available to the employee include applying for sick leave, recreation leave (also known as annual leave), long service leave and retention leave. Alternatively, an employee can request the use of accrued flexitime or Time Off in Lieu of the payment of overtime balances that may have been accrued. The entitlement to the criteria based personal carer’s leave also provides an employee with having paid time off work by accessing their sick leave entitlement.

Table 1 details the categories for special leave with pay and the sections of this Section which provide the criteria for approval.

TABLE 1 – Categories for Special Leave With Pay

	Reference	Categories	Period of Leave
Part 1	Special leave with pay will be approved and not considered as part of the 15 days per service year	Attendance in court as a witness on behalf of the State	As required
		Bereavement leave	2 days per occasion
		Blood donors (subject to impact on operational requirements)	As required
		Defence reserves leave	As required
		Disability resulting from War Service Leave	As required
		Family and domestic violence leave	up to 15 days per year
		Jury service	As required
		Travelling time for employees in remote and very remote localities	Dependent upon locality
		First Nations Voice to Parliament	As required
Part 2	Special leave with pay may be approved - Total of all leave must not exceed 15 days per service year	Community responsibilities	Total period of special leave with pay must not exceed 15 days per service year and approval must be consistent with the approved criteria
		Individual Needs and Responsibilities	
		Moving House – 1 day per every three years only	
		Care of a Sick Child who is a Dependent – up to 3 days in a service year	
		Urgent pressing necessity	
Part 3	Other special paid leave arrangements which may be approved and not considered as part of the 15 days per service year	Elite athletes	Consistent with the approved criteria
		Trade union training leave	
		Responsibilities as an Employee Representative	
		COVID-19 related absences	

1. PART 1 – SPECIAL LEAVE WITH PAY WILL BE APPROVED AND NOT CONSIDERED AS PART OF THE 15 DAYS PER SERVICE YEAR

Special leave with pay will be approved for the following categories:

- a) attendance in Court as a witness on behalf of the State
- b) bereavement leave
- c) blood donors
- d) defence reserves leave
- e) disability resulting from war service leave
- f) family and domestic violence leave
- g) jury service
- h) travelling time for employees in remote and very remote localities
- i) First Nations Voice to Parliament

The absences from the worksite or workplace as outlined above are not considered to be part of the 15 days special leave with pay total for special purposes. The criteria for approval is set out below.

A. Attendance in Court as a Witness on Behalf of the State

When an employee is required to attend court as a witness on behalf of the State the employee is regarded as being on duty, and it is not necessary to grant them special leave with pay, therefore it should not be recorded as such. In these circumstances employees must not accept witness fees. Fares and expenses are to be paid by the agency which initiated the request for the employee to attend.

Employees subpoenaed as a witness or defending a civil right in court may be granted special leave. Employees should be aware that the party issuing the subpoena is expected to reimburse their salary. If necessary, an employee should request the court to make an order to that effect before giving evidence.

The granting of special leave with pay is subject to any fees received towards the reimbursement of salary being paid into general revenue.

Court appearances in other situations must be covered by recreation leave or leave without pay.

B. Bereavement Leave

An employee (other than a casual employee), on the death of a:

- spouse (including a de facto spouse or a former spouse or de facto spouse)
- parent
- parent-in-law
- sister or brother
- child or step-child
- household member
- grandparent
- grandchild

is entitled, on notice to their manager, to special leave with pay for 2 ordinary days' work. Proof of death must be furnished by the employee to the satisfaction of the chief executive, agency head or delegate, if requested. While a chief executive, agency head or delegate needs to be satisfied that there is justification for granting such leave, such requests should be treated with empathy and acknowledgement of the employee's circumstances.

Additional leave in the form of recreation leave, long service leave, special leave with or without pay or the like may be approved by agreement with the chief executive, agency head or delegate subject to the circumstances and requirements of the employee. Should additional special leave with pay be approved, the additional leave forms part of the 15 days special leave with pay per service year.

C. Blood Donors

In line with a longstanding and continuing South Australian Government policy, public sector employees requested by the Australian Red Cross Blood Service to attend a blood-taking centre to donate whole blood, blood plasma or platelets may be permitted to do so if necessary during working hours.

In relation to the donation of whole blood, a donor can be requested to donate blood every 12 weeks, and the whole donation process takes approximately 1 hour. The donation of blood plasma or platelets may be required more frequently on a fortnightly or monthly basis. While the collection time for plasma is roughly the same as for whole blood, the collection of platelets can take up to 2 hours.

A chief executive, agency head or delegate may grant special leave with pay to employees for reasonable travelling and attendance time to enable them to donate blood.

A chief executive, agency head or delegate will reasonably consider requests for paid time off to donate blood; however, such decisions should consider organisational requirements. For example, it may not be appropriate to release an employee currently located in the country to donate blood in metropolitan Adelaide or the Adelaide CBD, or to release an employee in circumstances if essential services cannot continue to be effectively provided in their absence.

For the purposes of blood donor leave, part time employees are entitled to the same amount of special leave with pay as are full-time employees.

D. Defence Reserves Leave

In accordance with the *Defence Reserve Service (Protection) Act 2001 (Cth)*, a chief executive, agency head or delegate must not hinder or prevent an employee from volunteering to render Defence Service or from rendering Defence Service.

Defence Service means service in a part of the Defence Force Reserves, including ordinary reserve service (e.g. training) and voluntary continuous full-time service.

The Department for Defence encourages Reservists to provide to their employer as much notice as possible of their Defence Service obligations. In some instances, the Reservist may be called upon with little or no notice (see “Call Outs” below) and must be released.

An application by an employee for Defence Reserves leave must be accompanied by a Training Notice or other relevant authorisation from the Department of Defence.

Leave with pay

An employee who is a member of the Defence Reserves is entitled to special leave with full pay, as follows:

- up to the equivalent of 20 working days paid leave in a twelve-month period
- up to the equivalent of an additional 10 working days paid leave in the first year of service as a reservist.

Other leave

Any leave required for Defence Reserves in excess of the above would normally be taken as leave without pay.

Note that during a period of special leave with pay, a reservist employee may be paid by both the public sector agency employing them and the Defence Reserves, but for any period of leave without pay, only by the Defence Reserves.

Call outs

In the event of a “call out”, a Reservist employee would normally be granted leave without pay for the whole period they are absent. Commonwealth defence legislation enables the Governor-General to call out the Reserves for a declared war or other contingencies, such as warlike conflicts, peace enforcement, peacekeeping, humanitarian relief, civil aid and disaster relief operations.

Employer Support Payment Scheme

Public sector agencies are expected to access Employer Support Payment Scheme (ESPS) entitlements from the Department of Defence whenever a Reservist employee is on Defence Reserves Service (i.e. for Ordinary Reserve service/training and for voluntary continuous full-time service) and the employee has completed an annual qualifying period of 2 weeks of continuous Defence Reserves Service. The qualifying period can be undertaken as a single period or multiple periods of continuous Defence Reserves Service of 5 days or more.

The ESPS is adjusted in line with the Average Weekly Ordinary Time Earnings (AWOTE). The AWOTE for ESPS for the Financial Year relating to periods of continuous Defence Service is available on the Australian Defence Force Reserves web site: <http://www.defence.gov.au/reserves>. For Reservist employees in part time employment, a pro rata amount of the applicable AWOTE is calculated based on their weekly working hours.

An agency will not be eligible to access ESPS entitlements if a Reservist employee is required to use recreation, long service leave or retention leave to undertake Defence Reserves commitments.

Employment protection

Pursuant to the *Commonwealth Defence Reserve Service (Protection) Act 2001*, employers, including public sector agencies must protect the employment status and entitlements of the Reservist employee while absent on Defence Reserves Service. The agency must continue to employ the Reservist employee on completion of their Defence Reserves Service, i.e. peacetime training, voluntary continuous service and call outs.

Refer also to Section G - Recognition of Prior Service and Leave Accruals for information on recognition of military service for the calculation of leave entitlements.

E. Disability Resulting From War Service Leave Eligibility

Special leave with pay for war service disability leave may be granted to employees who served with the Australian Defence Forces and who are absent because of a disability accepted by the Department of Veterans Affairs:

- as a war-caused injury or war-caused disease as defined under the *Veterans Entitlement Act 1986* (Cth) (“the VE Act”), or

- as a service injury or service disease arising from warlike service or non-warlike service as defined under the *Military Rehabilitation and Compensation Act 2004* (Cth) (“the MCE Act”).

For the purposes of this Determination, peacetime operations as defined under the MCE Act are not recognised as warlike or non-warlike service for the purposes of war service disability leave.

Crediting of Leave

War service disability leave is to be credited to eligible employees on the following basis.

- A special non-cumulative war service disability leave credit equivalent to 9 weeks (to be recorded in hours) upon commencing employment in the Public Service or in a public sector agency to which section 16 of the PS Act applies
- A cumulative credit of the equivalent of three weeks per annum (to be recorded in hours) upon the employee’s annual service anniversary date. This entitlement will accumulate for 3 years (up to a maximum of the equivalent of 45 working days) and re-accumulate if used
- The maximum credit which may be accumulated in any service year is the equivalent of 45 working days inclusive of the current year’s credit, and this accumulative credit can be used only when the non-accumulative credit has been exhausted.

Granting of leave

An application for war service disability leave must be supported by a medical certificate for the period of absence detailing the nature of the disability suffered by the employee.

Leave will be granted upon the submission of evidence that the disability shown on the medical certificate has been accepted by the Department of Veterans’ Affairs as arising from warlike or non-warlike service (excluding peacetime operations).

War service disability leave granted to an employee will be on full pay irrespective of repatriation benefits. The leave available under this arrangement is in addition to the normal sick leave entitlement provided by the PS Act and PS Regulations and this Determination.

F. Family and Domestic Violence Leave

Entitlement

The FW Act (on and from 1 September 2023) provides employees with an entitlement to paid family and domestic violence leave. That entitlement is set out in schedule 3B of the FW Act.

All public sector agencies are required to provide paid family and domestic violence leave in accordance with the FW Act.

The following sets out a summary of the provisions in schedule 3B of the FW Act.

In summary, schedule 3B of the FW Act provides:

- all employees, including casual employees, are entitled to 15 days family and domestic violence leave from the beginning of each year of their employment
- the leave does not accrue into subsequent years of employment
- the leave can be taken for part of a day in a block of one or more whole hours

- the leave is paid at the full rate of pay, inclusive of overtime, allowances, loadings or any other separately identifiable amount:
 - for casual employees, the amount payable for a period of leave is worked out as if the employee had worked their rostered hours, or hours they had agreed to work, over that period
 - for other employees, the amount payable for a period of leave is worked out as if the employee had not taken the leave
- an employee can take family and domestic violence leave for any of the following purposes arising from or in relation to family and domestic violence experienced by the employee:
 - to attend medical appointments of any kind, including appointments relating to mental and emotional health
 - to seek and receive legal advice or assistance in relation to proceedings or potential proceedings of any kind
 - to attend or otherwise make arrangements for proceedings of any kind
 - to relocate residences or make other safety arrangements of any kind
 - for any other purpose relating to the employee dealing with the impact of family and domestic violence
 - for any other purpose prescribed by the regulations
- what notice and evidence the employee needs to provide before, or after, taking the leave
- strict confidentiality provisions, which carry significant financial penalties if breached.

Schedule 3B of the FW Act provides that casual employees can apply to take family and domestic violence leave for periods they have not yet been rostered or agreed to work. In practice, this would make the employee unavailable to be rostered or offered work during that period. However, if a casual employee chooses to apply for leave in these circumstances, they will not be paid for that period of leave and the leave will be deducted from the available 15 days.

Casual employees are not however required to apply for family and domestic violence leave to cover a period they are not rostered and have not otherwise agreed to work. They may instead simply explain that they are not available to be rostered or accept work for a particular period without any deduction from the available 15 paid days.

Leave for part of a day

As indicated, Schedule 3B of the FW Act allows employees to take family and domestic violence leave for part of a day in a block of one or more whole hours. Any fraction of an hour is regarded as a whole hour.

The FW Act provides that an employee will have taken one day's family and domestic violence leave when: the number of hours taken as family and domestic violence leave (for part of a day) equals the number of hours usually worked by the employee in a day.

Definition

'Family and domestic violence' means domestic abuse within the meaning of the [Intervention Orders \(Prevention of Abuse\) Act 2009](#). That is the definition used in Schedule 3B of the FW Act.

In summary, this covers acts of abuse by one person against another, who are or were formerly in a relationship. Relationship is broadly defined. It includes marriages, intimate relationships, relationships between family members, carers, and other relationships as defined in section 8(8) of the *Intervention Orders (Prevention of Abuse) Act 2009*. Abuse may take many forms including physical, sexual, emotional, psychological or economic abuse. Acts of abuse are acts which result in or are intended to result in:

- physical injury
- emotional or psychological harm
- an unreasonable and non-consensual denial of financial, social or personal autonomy
- damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.

Notice requirements

In accordance with Schedule 3B of the FW Act, if practicable employees are required to give notice before taking leave. If that is not possible, they are required to give notice as soon as practicable in the circumstances. The notice must cover:

- their intention to take the leave
- the intended purpose of the leave
- the expected length of absence.

Employees must, at the request of their agency, provide evidence that would satisfy a reasonable person that the leave is for one of the eligible purposes. However in requesting this evidence, agencies must not request information relating to the details, nature or extent of the family and domestic violence experienced by the employee. Employees are also not required to provide this information.

Confidentiality

The confidentiality provisions make it an offence to disclose information about an employee's experience of family and domestic violence (with a maximum penalty of \$10 000), except:

- with the consent of the employee, or
- for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of a child, or
- if the disclosure is reasonably necessary for the protection of the lawful interests of the person disclosing the information.

Managers should seek advice if they believe there is a defined exception which permits disclosure.

Managers are accordingly required to keep all information concerning the leave application strictly confidential. This includes, after sighting any supporting documentation, returning that documentation to the employee.

The provisions prohibit employee payslips including any information which indicates that an employee has taken or been paid in respect of family and domestic violence leave, or which reveals an employee's balance of such leave. The leave can be specified on a payslip in generic terms, for example as 'miscellaneous leave', 'special leave' or 'other leave'.

Protection from discrimination

From 1 September 2023, the *Equal Opportunity Act 1984* has made it unlawful to discriminate against a person on the ground of being, or having been, subjected to domestic abuse, in all areas of public life including at work. Domestic abuse under that Act has the same meaning as used in Schedule 3B of the FW Act.

The Commissioner for Equal Opportunity has the power to deal with complaints made on the ground of domestic abuse, as does the South Australian Civil and Administrative Tribunal should the complaint not be resolved.

Further information about this type of discrimination is [available on the website of the Commissioner for Equal Opportunity](#).

Applying for leave

Agencies or employees may contact Shared Services SA if they require assistance with the forms or documents required to apply for family and domestic violence leave from a payroll perspective.

Additional leave

If an employee requires more than 15 days leave in a year relating to family and domestic violence, a chief executive, agency head or delegate may consider approving other forms of leave available. As well as accrued entitlements, employees may be granted special leave with pay available under "urgent pressing necessity".

All reasonable steps should be taken to facilitate the approval of such applications where the leave is urgently required due to family and domestic violence.

Additional leave should be applied for and paid in the usual way for the type of leave. It should still be treated with the same confidentiality as paid family and domestic violence leave.

G. Jury Service

Employees ineligible for jury service

Employees to whom this Determination applies who are ineligible for jury service under the *Juries Act 1927* are:

- legal practitioners actually practicing as such
- persons employed in a public sector agency whose duties of office are connected with the investigation of offences, the administration of justice or the punishment of offenders
- persons employed in the administration of courts or in the recording or transcription of evidence taken before courts.

Employees who are ineligible for jury service and who receive a jury call up notice must make a personal application to the Sheriff, through the chief executive or delegate, seeking exemption from jury service on the grounds of their ineligibility.

Leave for employees required for jury service

Employees who attend jury service during ordinary working hours will be granted special leave with pay subject to the following conditions:

- the Sheriff is notified prior to the commencement of service that payment (other than for travelling expenses) will not be sought
- applications to a chief executive or delegate for special leave with pay should be accompanied by written evidence of the duration of attendance for jury service and certification that payment was not made
- as far as practical, the employee returns to work if attendance for jury service ceases before the end of normal working hours.

A chief executive, agency head or delegate will grant such leave to employees for whatever period they are required for jury service.

H. Travelling Time for Employees in Remote and Very Remote Localities

Special leave with pay for travelling will be granted (in conjunction with recreation leave as necessary) to an employee stationed* in a remote, or very remote, area who travels to metropolitan Adelaide or the Adelaide CBD, or to a destination which is further from the employee's headquarters than the relevant location in metropolitan Adelaide or the Adelaide CBD, using the shortest practicable route. Chief executives, agency heads or delegates should use the table outlined below as a guide to determining the appropriate amount of special leave with pay. Special leave with pay for travelling will be granted once only in each service year.

Public sector agencies should use the following table as a guide to determining an appropriate amount of special leave with pay.

TABLE 2 – Travel time for employees in remote and very remote locations.

Location	Days	Location	Days
Amata	4	Leigh Creek	2
Andamooka	2	Locks 7, 8 and 9	1
Coober Pedy	2	Maree	2
Ernabella	4	Marla	2
Fregon	4	Oodnadatta	2
Hawker	1	Oraparinna	1
Indulkana	3	Roxby Downs	2
Kangaroo Island	1		
Lake Victoria	1	West of 137° Longitude (except other localities listed in this table)	1
		Yalata	2

*Stationed – located for work purposes

I. First Nations Voice to Parliament

Employees who are elected as a member of the South Australian First Nations Voice to Parliament (the Voice) may apply for special leave with pay for the purpose of fulfilling responsibilities related to the Voice.

The following criteria will apply:

- the leave will not be counted as part of the 15 days per service year special leave with pay
- employees seeking to access the leave must be an elected member of the Voice
- access to leave may be granted for occasions where the employee is required to fulfill their statutory responsibilities as a member of the Voice within their normal or rostered working hours
- reasonable notice of absences is to be provided where possible
- applications to access the leave must be made to the chief executive/agency head, or their delegate.

Employees elected as a member of the Voice will be entitled to such remuneration, allowances and expenses as may be determined by the Governor in accordance with the relevant legislation.

2. PART 2 - SPECIAL LEAVE WITH PAY MAY BE APPROVED - TOTAL OF ALL LEAVE MUST NOT EXCEED 15 DAYS PER SERVICE YEAR

Special leave with pay may be approved for the following categories:

- a) community responsibilities
- b) individual needs and responsibilities
- c) urgent pressing necessity

The criteria that must be applied in determining applications pursuant to these discretionary categories are detailed below.

The maximum period of special leave with pay to cover absences from work due to the circumstances identified in this Part must not exceed the maximum of 15 days per 12-month period as established by regulation 19 of the PS Regulations.

A. Community Responsibilities

Emergency services including community service

As a reflection of the importance of community service (which may include community responsibilities) including emergency services, chief executives or delegates are encouraged to grant special leave with pay to an employee to undertake duties as a volunteer member of an emergency service or community organisation, such as:

- St John Ambulance Australia
- SA Ambulance Service
- State Emergency Service South Australia
- SA Country Fire Service.

Employees engaged in duties, a role or position or particular task that is/are urgent or essential may not be released to perform emergency and other community service if the chief executive or delegate considers that the absence will adversely affect the work of the public sector agency.

Leave to attend emergency and other community services training courses

Leave may be granted to an employee to permit them to attend training courses for emergency services and emergency management activities, provided that:

- the employee is nominated by the emergency and other community service organisation
- the chief executive of the emergency and other community service organisation approves the nomination and informs the chief executive, agency head or delegate in the relevant agency in writing of the name of the nominated employee, the proposed training to be undertaken and the period during which it is to be held
- no expenses (apart from the employee's salary) are to be borne by the public sector agency
- the amount of special leave with pay for emergency and other community services training does not exceed the equivalent of ten days in a service year.

Special leave to attend emergency service calls

Special leave may be granted to employees for emergency service calls, provided that:

- the emergency or other community service organisation subsequently confirms in writing that the employee was required for emergency duty, the period for which the services of the employee were required in that emergency, and the "call-out" fee (if any) which was paid to the employee
- as far as is practicable, the employee returns to work if the emergency duty ceases before the end of normal working hours.

An employee who has been engaged on emergency work as a volunteer member of an emergency or other community service organisation, for a period of at least 8 hours, is entitled upon the cessation of such work and prior to the resumption of normal duties, to a clear break of eight hours without loss of pay for ordinary working time occurring during such a break. Any reasonable period of additional time off (for recuperation etc.) for which special leave with pay has not been approved can be taken by utilising flexible working arrangements, recreation, retention leave or long service leave (if available), or leave without pay, at the choice of the employee.

Call out fee when attending emergency service calls

"Standby" duty of an employee who is a volunteer member of the Country Fire Service or State Emergency Service SA is to be regarded as an emergency service call.

Employees entitled to a "call-out" fee during a period of time off as special leave with pay set out above will be paid the difference between the employee's salary and the "call-out" fee (if any) paid by the community service organisation.

Members of agency firefighting units

Employees who are members of agency firefighting units are not to be granted special leave with pay under this Determination. These units have been formed to protect agency property in the event of fire and employees in these units are considered to be "on duty" when engaged in firefighting activities or training for such activities.

Foster Carers Leave

Foster carers play a vital role in our community and this contribution is highly valued by the South Australian Public Sector. To better enable the contribution made by foster carers to be appropriately

recognised, chief executives, agency heads or delegates are strongly encouraged to grant special leave with pay to an employee to ensure they can fulfil their important caring responsibilities.

These responsibilities may include making the necessary arrangements to receive a child and to settle the child into the family home following a formal fostering arrangement.

In order to be granted special leave with pay for the purposes of foster caring, the employee must be an approved carer in accordance with the *Children and Young People (Safety) Act 2017*.

Access of up to 15 days special leave with pay per service year for foster carer's leave is part of the general special leave with pay provisions and not a further 15 days.

B. Individual Needs and Responsibilities

This category provides for the chief executive or delegate to consider applications for special leave with pay that cover absences limited to caring for a sick child (depending upon the facts and circumstances), compassionate reasons, cultural and community responsibilities and domestic relocation arrangements.

Cultural and Community Responsibilities

Special leave with pay may be granted to employees who have to fulfil community, ceremonial, family, funeral and/or cultural obligations.

Access to up to 15 days special leave with pay for cultural leave is part of the general special leave with pay provisions and not a further 15 days.

ANZAC Commemoration March

Leave may be granted to those ex-service personnel who served with the Australian, British or Dominion Services to cover time necessarily lost for travelling by those employees who, because of the distance of their normal place of residence or lack of transport facilities, could not otherwise participate.

Care of Sick Child who is a Dependent

An employee may make an application for special leave with pay for this purpose and may be granted for up to three days in a service year. A chief executive or delegate should be satisfied that it is not practical or reasonable for alternative arrangements to be made. One day's special leave with pay may be granted in cases where a suitable alternative does exist, but it would not be reasonable or practicable to expect it to be immediately available.

South Australian Industrial Relations Commission decision 1591/1996 regarding an Application to Vary the Department for Education and Children's Services Enterprise Agreement 1996 provides further explanation on when an employee is able to make an application for special leave with pay in order to care for a sick child who is a dependent. It provides that there is no requirement to use Personal Leave to care for a sick child prior to accessing this type of leave. Such leave is not accumulative from year to year and does not reduce the entitlement to any other form of leave.

For the purposes of this Determination a sick child means a child who needs direct care and support due to injury or illness.

Note: an employee is able to make an application for special leave with pay to care for family member (other than for a dependent child) via "urgent pressing necessity" provisions stated in part 2 c) of this Section.

Moving House

This leave is available where an employee changes residence for personal reasons.

Leave for this purpose may be granted for up to one day and is not to be granted at more frequent intervals than every three years.

If more than one family member is employed by the State Government, only one member is to be granted leave on account of a removal.

The chief executive, agency head or delegate should be satisfied that the removal will require the employee's absence for the greater part of a working day.

C. Urgent Pressing Necessity

Special leave with pay may be granted to enable an employee to be absent due to a matter of pressing or urgent necessity that requires the personal attention of the employee and cannot reasonably be attended to by the employee outside the employee's hours of duty. Such absences may be due to but not limited to situations involving family members.

The criteria for approving such leave is that the chief executive, agency head or delegate must be satisfied that it is not practicable or reasonable for alternative arrangements to be made. Further, the chief executive, agency head or delegate may have regard to available options to plan for the absence and to use alternate leave arrangements including flexible working arrangements.

3. PART 3 - OTHER SPECIAL PAID LEAVE ARRANGEMENTS WHICH MAY BE APPROVED AND NOT CONSIDERED AS PART OF THE 15 DAYS PER SERVICE YEAR

A chief executive or delegate may approve an employee taking leave with pay in the following circumstances/events. The leave with pay will be recorded as "special leave with pay" for the purposes of payroll system recording; however, the period of leave is not subject to the 15 days per 12-month period as prescribed in regulation 19 of the PS Regulations.

The following categories are covered:

- a) elite athletes
- b) responsibilities as an employee representative
- c) trade union training leave
- d) COVID-19 related absences.

A. Elite athletes

Eligible sports

The relevant websites for the sports organisations which determine the range of eligible sports for which elite athletes may be granted special leave with pay are listed below. These comprise those sports listed on the program for the next Olympic, Paralympics or Commonwealth games and will only be altered in conjunction with any changes made by the respective Games Associations.

Sports at Olympic Games

<http://www.olympic.org/sports>

Current details for the appropriate National or State sports organisation are available from the South Australian Sports Institute.

Sports at Commonwealth Games

<http://www.commonwealthgames.com/Sports/>

Current details for the appropriate National or State sports organisation are available from the South Australian Sports Institute.

Sports at Paralympics Games

<http://www.paralympic.org.au>

Current details for the appropriate National or State sports organisation are available from the South Australian Sports Institute.

Eligibility Criteria

A chief executive, agency head or delegate may consider and approve applications for special leave with pay from an elite athlete in relation to an eligible sport, provided the employee meets one or more of the following criteria. The person:

- will compete at an Olympic, Paralympics or Commonwealth games in an eligible sport, or
- is ranked in the top ten in the world in an eligible sport, or
- is a member of a national or South Australian state team/squad of an eligible sport.

Chief executives, agency heads or delegates may also approve applications for special leave with pay from employees who are coaches, officials and non-officiating participants in relation to the eligible sports.

Entitlements for elite athletes

A chief executive, agency head or delegate may approve special leave with pay to elite athletes if they meet the criteria above for the period of peak official competition attendance plus up to two days travelling time for each such attendance. They may also approve up to the equivalent of ten working days special leave with pay per service year for official Commonwealth, Paralympics or Olympic games lead up camps.

A chief executive, agency head or delegate also has the discretion to provide support for other training or competitive events by approving additional special leave with or without pay.

Entitlements for coaches, officials and non-officiating participants

A chief executive, agency head or delegate may also approve special leave with pay for coaches, officials and non-officiating participants as follows:

- head coaches, who are entitled to the same entitlements as elite athletes
- assistant coaches, umpires, referees and team managers, who are eligible for leave to attend a peak official national or international sporting competition in an eligible sport; plus up to two days travelling time for each such attendance. No other special leave with pay is available
- escorts of elite athletes with a disability who compete in sports that meet the above criteria.

Documentation

Applications for special leave with pay must be accompanied by a copy of the official advice from the appropriate Australian (or if appropriate South Australian) body to the employee about the employee's

selection as an Australian (or if appropriate South Australian) representative and a copy of the official itinerary or details of the training camps.

Applications for leave outside the approved criteria

Applications for special leave with pay will be required to meet the relevant criteria as listed above.

If special leave with pay is requested and the criteria are not met, then the chief executive, agency head or delegate may consider granting special leave without pay, recreation leave, long service leave, or retention leave, or allowing the employee to use flexible working arrangements.

In addition, the chief executive, agency head or delegate could consider the granting of special leave with pay for individual needs and responsibilities as provided in this Determination.

B. Responsibilities as an employee representative

It is acknowledged that employees undertake roles as representatives of employees or public sector representative organisations.

Training for nominees to appeal tribunals and remuneration review panels

A chief executive, agency head or delegate may grant special leave with pay to an employee who is a member of a public sector representative organisation to attend training courses to assist the employee to carry out their duties as a nominee of the public sector representative organisations for panels established for the South Australian Employment Tribunal. Such leave is subject to organisational convenience.

Work health and safety representatives

Section 70 of the *Work Health and Safety Act 2012* provides that *“The person conducting a business or undertaking must allow a health and safety representative to spend such time as is reasonably necessary to exercise his or her powers and perform his or her functions under this Act. ... Any time that a health and safety representative spends for the purposes of exercising his or her powers or performing his or her functions under this Act must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.”*

Section 72 of the *Work Health and Safety Act 2012* enables an elected health and safety representative and an elected deputy (ss.60 and 67, WHS Act) to attend authorised training in paid time (that is, the person is entitled to be paid what they would otherwise be entitled to receive for performing his or her normal duties during the applicable period).

C. Trade Union Training Leave

A chief executive, agency head or delegate may grant special leave with pay to employees who are members of public sector representative organisations to attend trade union training courses subject to all of the following:

- 1) the course is organised, run or approved by one of the following providers:
 - a. Australian Council for Union Training
 - b. SA Unions
- 2) the employee is nominated to attend the course by the recognised organisation of which they are a member (a certificate of eligibility must be signed by the Secretary of the recognised organisation or a person nominated by the Secretary)

- 3) in consideration of organisational requirements, it is determined by the chief executive, agency head or the delegate that the employee can be released by the public sector agency. In deciding whether to approve applications, the work of the agency must be a priority and the privilege may be withdrawn at any time it is considered necessary.

Special leave with pay may be granted to an eligible employee up to a maximum of the equivalent of 10 working days during two calendar years, to be calculated from the date the employee is first granted leave to attend a trade union training course. Special leave with pay in excess of this entitlement may be granted in special circumstances at the discretion of the chief executive, agency head or delegate but in no case will the amount exceed the equivalent of 20 working days over a two-year period.

All other costs relating to attendance at a course will be the responsibility of the nominating responsible organisation.

If an employee is absent on trade union training on their programmed day off, this day will stand as the programmed day off. The employee is not permitted to substitute another day for the programmed day off. Accordingly, this day is not to be debited as trade union training and the employee may use the day if additional trade union training is sought later in that two-calendar year period.

D. COVID-19 related absences

Special leave with pay of up to 15 days may be granted to enable an employee to remain absent for reasons directly relating to COVID-19.

Before approval, the chief executive, agency head or delegate must give due consideration to alternative available provisions including enabling flexible working, or the employee accessing their personal leave entitlements such as sick leave, annual leave, long service leave or retention leave.

4. PAID EMERGENCY RESPONSE LEAVE

Emergency service volunteers play a crucial role in protecting and supporting communities in times of need.

Effective from 9 December 2021, employees bound by the *South Australian Public Sector Enterprise Agreement: Salaried 2021* and who are registered members of a recognised emergency response volunteer service will be granted up to 5 days' special leave with pay on full pay to enable their deployment as part of an emergency service response to support South Australian communities.

Emergency response leave is in addition to existing categories of SLWP as defined within this Determination.

Eligibility

Eligibility for emergency response leave will be limited to those staff who:

- hold membership, or membership-like association, volunteering with:
 - a recognised emergency management body, or
 - an organisation which provides immediate support beyond frontline activities during an emergency, and
- are deployed on a voluntary basis as part of an official response to an emergency or natural disaster.

Accessing emergency response leave

Leave may be granted for:

- the period during which the employee is engaged in emergency response activity
- reasonable travelling time to and from the emergency response activity
- reasonable rest time for the employee immediately following the emergency response activity.

Additional emergency response special leave with pay should not be granted once the immediate emergency response has passed.

Evidence of deployment may be required, which may include:

- confirmation of membership with a relevant organisation,
- the nature of the emergency service activity being undertaken
- the period for which the employee will be deployed.

An employee on paid leave which is interrupted by an eligible emergency service response activity will have their paid leave re-credited.

Refusing a request for emergency response leave

- Requests for paid leave should be considered on a case-by-case basis with agencies making all reasonable attempts to accommodate the leave request in line with business needs.
- Where the employee's absence has the potential to disrupt services to the South Australian public, agencies must provide the reasons to the employee for not approving emergency response leave.
- An employee may apply for other forms of leave (either paid or unpaid) to undertake emergency response volunteering work.

5. GENERAL MATTERS

The Commissioner determines that the following policy arrangements as outlined in Table 3 will continue subject to the named agency/s consulting on amendments to vary and/or rescind the arrangements:

TABLE 3

Department/Administrative Unit	Policy Descriptor
Department of the Premier and Cabinet	Transition from Maternity/Adoption Leave 5 days Cultural Leave for Aboriginal and Torres Strait Islander (ATSI) employees Paid Partner leave Community Volunteering Leave
Department of Treasury and Finance	Community volunteering leave
Department of Human Services	Carer's Leave Disability Leave

Department for Environment and Water

Medical Treatment – Permanent Disability Paid
Partner Leave
Transition from Maternity/Adoption Leave

Department for Correctional Services

Paid Partner Leave

Special Leave with pay or leave without pay may only be granted to an employee on application made by the employee to the chief executive, agency head or delegate of a public sector agency in a form approved by the public sector agency.

For the purposes of this section, references to “the equivalent of days, weeks, months or years” means the equivalent number of hours normally worked by a full-time employee during such period.

Remuneration during special leave

Remuneration for the equivalent of the first four weeks of special leave with pay in any one service year will be based on normal salary, plus allowances payable on an annual basis or all-purpose basis. Other allowances and penalty rates are not payable.

Remuneration for periods over the equivalent of four weeks of special leave with pay in any one service year will be based on normal salary only. Unless contrary provisions are contained in the applicable industrial instrument, the continued payment of allowances can only occur with the approval of a chief executive, agency head or delegate. Penalty rates are not payable under any circumstances.

Superannuation

Employees considering a period of leave without pay for a period of 2 weeks or more are advised to contact Super SA regarding arrangements for the payment of employee and employer superannuation contributions.

Variation of leave

An employee who has applied for special leave with pay or leave without pay, or an employee who has commenced such leave, may apply to vary the approved period of leave provided that an amended application is submitted within a reasonable period of time prior to the proposed variation, 3 weeks is normally considered sufficient. The amended period must be agreed between the employee and agency chief executive, agency head or delegate, except in the case of parental leave, where the employee is entitled to take up to the maximum amount of leave allowed under the PS Act and relevant industrial instrument.

6. EMPLOYEES WORKING UNDER FLEXIBLE WORKING ARRANGEMENTS

The following conditions apply for employees working under flexible working arrangements who access special leave with pay or leave without pay, except if otherwise specified in this Determination.

Part time employees

Part time employees are entitled to special leave with pay on a pro rata basis. When an employee takes leave, the hours to be recorded as special leave with or without pay are those hours which the employee would have worked if they had not been absent.

Employees purchasing leave

The participation of an employee in a purchased leave option does not affect their entitlement to special leave with pay or leave without pay. An employee cannot apply for special leave with pay or leave

without pay while they are absent from duty as part of a purchased leave arrangement. However, purchased leave may be taken in conjunction with special leave with pay or leave without pay.

Employees working compressed weeks

The compressed working weeks option does not affect an employee's entitlement to special leave with pay or leave without pay.

The number of hours an employee would normally have worked in their compressed weeks agreement on a particular day must be recorded as special leave with pay or leave without pay if the employee is on leave for that day. However, if the nominated day of non-attendance of an employee falls during a period of special leave with pay or leave without pay, then no such leave is recorded for that day.

Employees working under a flexi time arrangement

During a period of special leave with pay or leave without pay, the hours that would normally have been worked by an employee must be recorded for administrative purposes as special leave.

Employees working from home

An employee's potential entitlement to special leave with pay or leave without pay is unaffected by a working from home arrangement.

7. PARENTAL LEAVE

The arrangements by which an employee is entitled to be granted leave without pay as required by the employee to enable the employee to be on leave for up to a specified maximum period to undertake the care of a young child not of school age of whom the employee is a parent or is exercising parental responsibilities (as per regulation 19(1)(d), PS Regulations) will be in accordance with the following and clause 7.1 "Parental Leave" of the *S.A. Public Sector Salaried Employees Interim Award* (as varied from time to time).

Unpaid parental leave may be broken by periods (i.e. possibly more than one) of paid leave or work and paid leave may be split into two equal proportions broken by one period of paid or unpaid leave or work.

Paid parental leave entitlements

Note: Paid parental leave entitlements may be prescribed in an applicable enterprise agreement. Executive employees are not covered by enterprise agreements but hold the same entitlements, where eligible.

An employee, other than a casual employee, who has completed 12 months' continuous service immediately prior to the birth of the child, or immediately prior to taking custody of an adopted child (as applicable) is entitled to paid maternity or adoption leave. Such entitlement to paid maternity or adoption leave is to be calculated in accordance with an applicable enterprise agreement, or else in accordance with the *South Australian Public Sector Enterprise Agreement: Salaried 2021* or its successor.

In determining eligibility for paid maternity and paid adoption leave, 12 months continuous service is to be calculated on the same basis as effective service for long service leave. It will include any service with organisations, which has been recognised as effective service under this Determination and previous directions, standards or determinations of the Commissioner for Public Sector Employment. That service need not be continuous, provided it is recognised.

If an employee is working full-time immediately prior to commencing paid maternity or paid adoption leave, the leave is paid at the full-time rate. Part time employees will have the same entitlements as full-

time employees but paid on a pro rata basis according to the average number of contracted hours during the immediately preceding 12 months (disregarding any periods of leave).

Employees (other than casual employees) on leave without pay for parental leave purposes only, are eligible for paid maternity leave and paid adoption leave, even if they have been on leave without pay for more than 12 months, provided they meet the 12 months continuous service criteria as outlined above.

Employees who have previously taken paid maternity or adoption leave, are eligible to take another period of paid maternity leave on the birth of a further child (or paid adoption leave on the custody of a further child) without accruing a further 12 months of effective service and without returning to work.

An employee who is absent on paid maternity leave or paid adoption leave continues to accrue entitlements to sick leave, recreation leave, long service leave and retention leave.

Subject to provisions in an applicable enterprise agreement, an employee may elect in writing to take a period of paid maternity or adoption leave at half pay. In which case during that period the employee will be entitled to be paid at half the ordinary rate of pay (including allowances that are expressed as being payable 'for all purposes' but otherwise excluding allowances, penalties or other additional payments). Where such election is made, the first half of the period of paid maternity leave or paid adoption leave is treated as special leave with pay. The second half of the period is treated as leave without pay, both for the purposes of incremental progression and determination of the accrual of leave entitlements.

General provisions – return to work

An employee who returns to duty after the completion of parental leave (either unpaid, paid or a combination of paid and unpaid leave) is entitled to be assigned the same duties as held immediately before commencing that leave or, in the case of an employee who was transferred to another role, duties or position for health and safety reasons, to the duties performed immediately before such transfer.

If those duties no longer exist, but there are other duties available for which the employee is qualified and is capable of performing, the employee is entitled to be transferred to or assigned duties as near as possible, comparable in status and pay, to that of their former duties performed.

Unpaid parental leave provided under the PS Act

A chief executive, agency head or delegate must grant an employee up to a maximum of the equivalent of 52 weeks leave without pay if the employee applies for such leave on the ground that she is pregnant or he/she requires the leave to undertake the care of a young child not of school age of whom the employee is a parent (including an adopted child) or is exercising parental responsibilities. The employee is entitled to such leave for each child not of school age.

All employees are entitled to unpaid parental leave regardless of how long they have been employed and regardless of how they are employed (i.e. whether ongoing, term or casual). However, employees employed on a term basis are not entitled to leave without pay past the end of the term of their contract except if they hold the right to further ongoing appointment at the end of the contract. If such a right is held and the leave without pay will extend past the end of the term of the contract, and in the event that this involves two public sector agencies, then the employee should seek leave without pay from both agencies.

Alternatively, the chief executive, agency head or delegate in the public sector agency in which the employee is substantively or currently employed may extend or renegotiate the terms of the appointment, provided any extension to a term of employment conforms with the requirements of the PS Act and any determinations of the Commissioner for Public Sector Employment.

Employees with an agreement (written or otherwise) which provides they may be required to work on an 'as and when required' casual basis are entitled to 'parental leave'. However, rather than granting leave without pay, the relevant agency will, for administrative purposes, treat the agreement as suspended for a period of time up to a maximum of 52 weeks.

However, employees are not entitled to have the agreement treated as suspended past the original term of the agreement. Note that the period the agreement is treated as suspended is not effective service for the purposes of determining long service leave and retention leave entitlements. If the agreement actively resumes following the period it is treated as suspended, the period treated as a suspension is not considered as a break in service, regardless of whether or not it continued for more than 3 months.

Applying for unpaid parental leave

An employee exercising care responsibilities for a young child not of school age is entitled to leave without pay to care for the child, even if he/she is not the parent of the child. However, the employee must be able to demonstrate to the satisfaction of the chief executive, agency head or delegate that such care responsibilities do exist.

Except in the circumstances outlined in the previous paragraph, each period of parental leave applied for as leave without pay by an employee must be for the equivalent of a minimum of one week, unless otherwise approved by a chief executive, agency head or delegate in extenuating circumstances.

Agency's responsibility to inform

If an employee has advised that she is pregnant, or their spouse is pregnant, or that they are adopting a child, the employee must be informed by a chief executive, agency head or delegate of their entitlements and their responsibility to provide various notices or certificates or evidence.

Unpaid paternity leave

Unpaid paternity leave is available to a male employee when he produces a medical certificate to a chief executive, agency head or delegate. A male employee is entitled to one or two periods of paternity leave, the total of which must not exceed 52 weeks, as follows:

- an unbroken period of up to 2 weeks at the time of the birth of the child
- a further unbroken period of 50 weeks in order to be the primary caregiver of the child.

Unpaid adoption leave

Subject to providing sufficient evidence of adoption to a chief executive, agency head or delegate, both male and female employees are entitled to one or two periods of adoption leave, the total of which must not exceed 52 weeks. The two periods available should be broken up as follows:

- an unbroken period of up to 3 weeks at the time of the placement of the child
- a further unbroken period of 49 weeks in order to be the primary caregiver of the child.

Unpaid special adoption leave

An employee who has received approval to adopt a child who is overseas is entitled to such period of leave without pay, as is reasonably required by the employee to obtain custody of a young child not of school age of whom the employee will be the parent or exercising parental responsibilities. The employee is entitled to such leave in respect of each relevant child not of school age.

An employee who is seeking to adopt a child is entitled to leave without pay not exceeding 5 days as is required by the employee to attend such interviews, workshops, court attendance or examinations as are necessary for the adoption procedure.

This leave does not affect any entitlement to parental leave.

An employee and the employee's spouse may take this leave concurrently.

If an employee has an accrued entitlement to a form of paid leave, a chief executive, agency head or delegate may require the employee to take such leave instead of special adoption leave.

Variation or cancellation of parental leave

Without extending the core entitlement to parental leave, a period of parental leave may be extended once by the employee giving a chief executive, agency head or delegate 14 days written notice requesting an extension to the period and reasons for the request.

The duration of parental leave may be reduced, extended or the leave cancelled by agreement between an employee and the chief executive, agency head or delegate.

Parental leave is cancelled if the pregnancy terminates other than by the birth of a living child or the child adoption placement does not proceed. If these circumstances occur, a chief executive, agency head or delegate must allow and enable an employee to return to work within 4 weeks of receipt of the notice of the termination of the pregnancy or the adoption not proceeding.

Pregnancies resulting in a stillborn child

If a pregnancy results in a stillborn child, the employee is still entitled to paid maternity leave. In situations where there is a miscarriage, the employee is not eligible for paid maternity leave. However, the employee may be eligible to apply for sick leave or special leave with pay (refer to Section F of this Determination). In addition, a chief executive, agency head or delegate could consider allowing the employee access to accrued paid leave entitlements other than sick leave or leave without pay.

Concurrent leave

No employee may take parental leave concurrently with such leave taken by the employee's spouse; apart from paternity leave of up to two weeks at the time of the birth of the child or adoption leave of up to 3 weeks at the time of the placement of the child.

In addition, a chief executive, agency head or delegate could consider allowing the employee access to accrued paid leave or leave without pay.

8. LEAVE WITHOUT PAY FOR THE PURPOSE OF A CAREER BREAK

A chief executive, agency head or delegate may grant leave without pay to an employee for the purpose of a career break to enable an employee to attend to other responsibilities, pursue other professional development, a new career endeavour or move into retirement. The employee remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and therefore must have authorisation to engage in outside employment or other remunerative activity. Approval for leave is limited to a maximum of 2 calendar years or the equivalent of the employee's existing effective service in the South Australian public sector, whichever is the lesser. A chief executive, agency head or delegate may grant additional leave without pay if considered appropriate up to the maximum period of 2 calendar years.

9. LEAVE WITHOUT PAY TO WORK IN ANOTHER ORGANISATION

A chief executive, agency head or delegate may grant leave without pay for an employee to permit them to take up employment in another (non-public sector) organisation. Such a decision should be based on consideration of possible benefits to the particular public sector agency, the wider public sector and the individual employee. Such leave should not be granted if there may be a conflict of interest in relation to the proposed employment and the work of the agency or in circumstances where the proposed work, duties or functions might reflect adversely on the employee, agency, public sector and/or Government. The employee remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and therefore must have authorisation to engage in outside employment or other remunerative activity.

If an employee is granted leave without pay to work for an organisation where service would not normally be recognised for the purpose of determining leave entitlements under Section G - Recognition of Prior Service and Leave Accruals of this Determination, and such employment will bring high benefits to the agency, a chief executive, agency head or delegate may determine that the employment in the organisation will be recognised as effective service and service upon the employee's return to duty in the agency.

Competition regulation offices

It is current Government policy that chief executives, agency heads or delegates must consider the special staffing needs of competition regulation offices so as to make relevant staff available for employment in such offices as required and to provide further employment at the end of such employment arrangements.

Chief executives, agency heads or delegates must approve applications for leave without pay to an employee if they request leave to enable them to take up employment in a competition regulation office.

Ministers' Offices or Electoral Offices

If an employee is offered a contract to work as a Ministerial staff member or member of a Minister's personal staff pursuant to section 71 or section 72 of the PS Act, then a chief executive, agency head or delegate must release the employee.

Note: that employment as an Assistant to a Member of Parliament (e.g. in an electorate office) is not considered employment as a member of a Minister's personal staff and any request for leave without pay to undertake such work is not subject to this requirement.

Unions or Employee Associations

Applications from employees for leave without pay to work in a public sector representative organisation, union or employee association must be referred to the Chief Executive, Department of Treasury and Finance as the Declared Employer.

Accompanying a partner to a regional location in South Australia

If the partner of an employee takes up employment in a public sector agency and is required to relocate from the Adelaide metropolitan area to a regional South Australian location (or vice versa), then, if requested by the employee, a chief executive, agency head or delegate must grant the employee leave without pay to accompany their partner as follows.

- The period of such leave is limited to a maximum of 2 calendar years, or the equivalent of the employee's existing effective service in the South Australian public sector, whichever is the

lesser. A chief executive, agency head or delegate may grant additional leave without pay if considered appropriate.

- If the employee is appointed on a term (sometimes referred to as temporary) basis with no right of return to ongoing or longer-term employment at the end of the term, then such leave will only be given until the scheduled end date of the current term of their contract. A chief executive, agency head or delegate may approve the extension of the term of an existing contract to allow further leave, provided such an extension conforms to the requirements of the PS Act and any determinations of the Commissioner for Public Sector Employment.
- If an employee is appointed on a term (temporary) basis with a right of return to ongoing or longer-term employment at the scheduled end of the term, then such leave will be given from the term employment and then from the ongoing employment if the leave extends past the end of the existing term. A chief executive, agency head or delegate may approve the extension of the term of an existing contract to allow further leave, provided such an extension conforms to the requirements of the PS Act and any determinations of the Commissioner for Public Sector Employment.
- Employees engaged on a casual basis are not entitled to such leave, unless they hold a right of return to ongoing or term employment.

10. SUBSTITUTION OF LEAVE WITHOUT PAY FOR PAID LEAVE AND CREDIT OF PAID LEAVE

Subject to the following conditions, a chief executive, agency head or delegate will grant leave without pay for a period of absence previously covered by paid leave:

- if an employee previously applied for, and has been granted, long service leave, retention leave, recreation leave, or sick leave for that period of absence as a result of injury or illness
- at the time of application being made for paid leave, there was a claim pending for some type of compensation in respect of the claim
- the employee has subsequently received some form of compensation
- the employee has made application for leave without pay to cover the period of absence and has applied for reinstatement of paid leave credits previously used for that period
- the employee has produced satisfactory medical evidence that the period of absence for which reinstatement of paid leave credits is sought, was due to injury or illness
- the amount of paid leave previously used to cover the period of absence is to be reinstated and an appropriate adjustment in salary will be necessary because of the retrospective conversion of paid leave to leave without pay.

In such cases, the amount of leave previously approved by the chief executive, agency head or delegate for that period will be added to the employee's relevant current accrued entitlement.

11. TERM AND CASUAL EMPLOYEES

Employees employed on a term (sometimes referred to as temporary) or casual basis are not entitled to leave without pay past the scheduled end of the term of their contract except if they have a right of return to further ongoing or term (including longer term) employment at the end of the contract. If the employee has a right of return to applicable employment and the leave without pay will extend past the end of the term of the contract, the employee should seek leave without pay from both the chief executive, agency

head or delegate in the public sector agency in which they hold the contract appointment and the chief executive, agency head or delegate in the agency in which they hold the right to ongoing or longer-term employment.

Alternatively, a chief executive, agency head or delegate in the public sector agency in which the employee is employed on a term or casual basis has their contract may, if possible extend or renegotiate the term of the contract or arrangement, ensuring any such extension or renegotiation conforms with the provisions of the PS Act and any determination of the Commissioner for Public Sector Employment.

Casual employees are entitled to apply for leave without pay. However, prior to any approval of leave without pay, consideration will need to be given by a chief executive, agency head or delegate to the terms of the contract the employee is engaged upon and operational needs.

Employees with an arrangement (written or otherwise) which provides they may be required to work on an “as and when required” casual basis should not be granted leave without pay. Instead, the chief executive, agency head or delegate could consider treating the arrangement as suspended for a period of time. A period where the arrangement is treated as suspended cannot continue past the original term of the arrangement.

Note that a casual employee in an “as and when required” casual employment arrangement who does not work due to parenting purposes is not considered a break in service however the period of the suspension of the casual employment arrangement is not considered as effective service.

12. EFFECTS OF LEAVE WITHOUT PAY

Effect on date of salary increment

No period of leave without pay shall count as service for the purpose of salary increment progression unless:

- the employee’s salary range gives an entitlement related to age, or
- the employee is absent on worker’s compensation, or
- the leave without pay was for a work-related placement and the period is determined to count for this purpose in accordance with this Determination, or
- the leave without pay was for a purchased leave arrangement (up to a maximum of the equivalent of one calendar month only for each service year).

When calculating a revised increment date, the period progression is to be postponed should be based on the equivalent number of working days leave without pay granted in the previous service year. In the event that the period concludes on a working day immediately prior to a non-working day (e.g. a Saturday or rostered day off), payment should be made from the next working day. Public holidays (including part-day public holidays) are to be treated as normal working days for this purpose. However, the increment is recorded as being on the due date, regardless of whether it is a non-working day.

For part time employees the same method is to be used.

Effect on superannuation

Employees contemplating leave without pay (including for purchased leave) should seek advice on superannuation from Super SA on its effect prior to such leave being taken, and plan for the continuation or suspension of their and/or their employer’s superannuation contributions during the period of leave.

Effect on public holidays

If an employee is absent on leave without pay immediately preceding and immediately following a public holiday(s) (including part-day public holidays), the employee will not be paid for the public holiday, but the day(s) will not be recognised as leave without pay.

Effect on leave entitlements

Unless such leave has been determined not to count for the purposes of service or effective service, the number of hours of leave without pay in a service year which does not exceed the equivalent of 1 calendar month of service will count as service:

- if the period of leave without pay in a service year exceeds the equivalent of 1 calendar month of service, then the leave without pay in excess of the equivalent of 1 calendar month will not be counted as service or effective service
- if the period of leave without pay (in excess of the equivalent of 1 calendar month) straddles an employee's service year-end date, service or effective service does not recommence until the employee resumes duty. For this purpose, "resumes duty" means a physical return to work, but does not include a paid full day public holiday, a flexi day, rostered day off or a day of paid leave.

For the purposes of this Determination, the equivalent of one calendar month means:

- for a full-time employee working 5 days per week – the number of hours normally worked during 22 working days
- for employees working on flexible working arrangements – the number of hours normally worked in an average calendar month with 22 working days.

A period of leave without pay, which does not affect service for the purposes of determining leave entitlements, is known as the "leave without pay credit", which is calculated in the following manner:

- the fraction of time for a part time employee is the fraction of time worked (in comparison to a full-time employee) as at the date of commencement of the leave without pay
- base hours per day as it applies for all employees (including part time) is the average number of hours worked per week by a full-time employee divided by 5. For most public sector employees this equates to 7.5 hours (or 7.6 in the case of a 38 hour per week employee).

The number of hours of leave without pay that any employee can take in a service year before entitlements are affected = their fraction of time x 22 x base hours per day.

To ensure an equitable approach to employees whose part time hours are changed, which in turn varies their fraction of time, any remaining leave without pay credit in a service year should be adjusted as at the date of variation of hours worked as follows:

$$\text{New leave without pay credit (in hours)} = \text{Previous leave without pay credit (in hours)} \times \frac{\text{New fraction of time}}{\text{Previous fraction of time}}$$

A period of absence on leave without pay shall not count as service or effective service for the purposes of determining leave entitlements unless:

- the period of leave without pay in a service year is less than the equivalent of one calendar month, or
- the employee is absent on worker's compensation, in which case the full period of the absence or until the employee is certified as permanently unfit to return to duty, will count as service and effective service, or
- the employee is absent on a continuous period of approved leave without pay for a period of up to 12 months, supported by a medical certificate or other approved certification. Such leave does not count as effective service for the purposes of the accrual of future long service leave and retention leave entitlements, but does count as service for the purpose of the accrual of recreation leave and sick leave entitlements, or
- the leave without pay was to permit the employee to perform work outside the public sector which is related to their public sector duties or role when such period will count as service and effective service.

Sick Leave

Unless the leave without pay has been determined to count for the purposes of service, once an employee has taken the equivalent of one calendar month of leave without pay within the service year, each subsequent hour of leave without pay (i.e. which is not to be counted as service in the service year) will affect the sick leave to be credited to an employee as follows:

$$\text{Reduction (in hours)} = \text{Monthly accrual rate (in hours)} \times \frac{\text{Hours of leave without pay not to count as service}}{22 \times \text{base hours of day} \times \text{the fraction of time of employee}}$$

Note: If there is not sufficient sick leave accrued by the employee on the completion of a service month to allow an adjustment, then the existing sick leave accruals of the employee will be reduced accordingly, or if this is not sufficient, the sick leave accrued by the employee in subsequent service months may be reduced accordingly.

Recreation leave

Unless the leave without pay has been determined to count for the purposes of service, once an employee has taken the equivalent of one calendar month of leave without pay within the service year, each subsequent hour of leave without pay (i.e. which is not to be counted as service in the service year) will affect the recreation leave to be credited to an employee as follows:

$$\text{Reduction (in hours)} = \text{Monthly accrual rate (in hours)} \times \frac{\text{Hours of leave without pay not to count as service}}{22 \times \text{base hours of day} \times \text{the fraction of time of employee}}$$

Long service leave and retention leave

Leave without pay which is not counted for the purposes of the accrual of long service leave and retention leave entitlements has the effect of moving the current month/year of effective service date forward by the number of calendar days from the first day of leave without pay (i.e. in excess of the equivalent of one calendar month) to the calendar day before the employee returns to duty (note that for this purpose, a paid public holiday, flexi day or other day for which the employee would normally receive payment, or a day of paid leave, is considered a working day). This occurs even if the month/year of effective service would have previously been expected to end during the period of leave without pay.

Where leave without pay which is not counted for the purposes of accruing leave entitlements (i.e. in excess of the equivalent of one calendar month) is taken in hours and these accumulate to a working day, or more, this will count for one calendar day for the purpose of moving the effective service date forward. Leave in hours amounting to two days or more, will count for two calendar days etc.

The movement of the date of the month/year of effective service is based on the principle that any adjustment should reflect the calendar time between when the employee commences leave without pay and returns to work, regardless of how many days/hours the employee normally works during this period.

13. OUTSIDE EMPLOYMENT ETC. DURING SPECIAL LEAVE

An employee absent from duty on any form of leave remains bound by the requirements of the PS Act and the *Code of Ethics for the South Australian Public Sector*, and thus must have authorisation to engage in outside employment or other remunerative activity.

Section G

Recognition of Prior Service and Leave Accruals

Prior service that has previously been recognised (in accordance with previous or current public sector legislation, proclamations directions, determinations or standards of the Commissioner for Public Sector Employment) as effective service for the purposes of leave entitlements shall continue to be recognised as effective service.

Schedule 1, Part 7 of the PS Act requires that *“If a person becomes an employee of a public sector agency within 3 months after ceasing to be –*

- a) An officer or employee of the Crown in right of this State, the Commonwealth or another State or a Territory of the Commonwealth; or*
- b) An officer or employee of a prescribed class, then, for the purpose of determining the person’s entitlement to recreation leave, sick leave or long service leave, the period of the person’s service in that capacity is, to the extent determined by the Commissioner and subject to the conditions (if any) imposed by the Commissioner, to be counted as service or effective service for the purposes of this Act.”*

Note: The service of some persons who were employees of other (non-public sector) organisations may be recognised under specific South Australian legislation (e.g. employees transferred under the *Electricity Corporation (Restructuring and Disposal) Act 1999*). Clarification of the rights of such employees can be sought from the applicable Human Resources in an agency or upon legal advice.

Recognition of service with:

- the Commonwealth or another State or a Territory of the Commonwealth
- a university within the Commonwealth (excluding private universities)
- a local government authority as defined under the *Local Government Act 1999* (or equivalent legislation) in Australia

is subject to payment by the previous employer of the value of any long service and recreation leave liabilities to the employee upon termination of their employment (or with the agreement of the chief executive, agency head or delegate and, the employee the transfer of monies of the value of such leave entitlements, to the State of South Australia).

Note: Where an employee has less than the minimum period of service required to receive an entitlement or payment in lieu of the entitlement a South Australian public sector agency must recognise the service of that person notwithstanding that no funds are transferrable.

For the purposes of retention leave, if an employee’s service has been recognised for the purposes of long service leave, and that employee has 15 years or more recognised effective service, service for accrual of retention leave will commence no earlier than their commencement of employment in either the public service administrative unit or public sector agency.

1. MILITARY SERVICE

Part time military service, including service in the Defence Reserves is not recognised as effective service, unless that person is also employed by a public service administrative unit or public sector agency at the time of the military service.

Special leave with pay (and leave without pay) for Defence Reserves training and voluntary continuous full-time service will count as service for all purposes i.e. for recreation, sick, long service leave and retention leave, although accrued sick leave is to be reduced by the amount of any sick leave taken during the service period.

Leave without pay for Defence Reserves “call outs”, will count as service for long service leave and retention leave purposes, but not for sick leave or recreation leave, which will be managed as part of the Defence Reserves’ “call out” arrangements and/or operations.

2. MEMBERS OF GOVERNMENT BOARDS AND COMMITTEES

Service as a member of a Government board or committee is not recognised as effective service, except if that person is also employed by a public service administrative unit or public sector agency at the time of their service as a member of the board or committee.

3. BREAK IN SERVICE

Service in other organisations can only be recognised as effective service if:

- prior to 1/1/78, there was no break in employment between the time the person ceased employment with the organisation and started employment in the administrative unit, public sector agency with negotiated reciprocal leave arrangements or other recognised employer, apart from necessary travelling time
- from 1/1/78 onwards there was a break of three months or less between the time the person ceased employment with the organisation and started employment in the administrative unit, public sector organisation with negotiated reciprocal leave arrangements or other recognised employer.

4. CASUAL EMPLOYEES

In recognising the service of casual employees (for long service leave and retention leave purposes only), effective service includes service if an employee is not actually working but where there is a continuing relationship between the employee and the employer.

Such a relationship does not necessarily need to be evidenced in writing.

Note that a period of more than 3 months (other than for “parental leave”) between periods of paid employment during such a relationship is considered to be a break in service, and the service prior to such a break will not be considered as effective service for the purposes of accruing future long service leave and retention leave.

Note that a period of paid employment commences on the first day of employment in the period and ends on the last day of employment of the period – it is not based on when the employee was paid.

Note also that a casual employee in an “as and when required” casual employment arrangement who does not work due to parenting purposes is not considered a break in service (refer to Section F – Special Leave With Pay and Leave Without Pay - Part 6 Parental leave), however the period the employee does not work is not considered as effective service.

5. DETERMINATION OF LEAVE ENTITLEMENTS

Before service with other organisations can be recognised, or leave entitlements calculated and transferred, full details of service needs to be obtained in writing from the employee’s previous employer. This includes details of any part time or casual service, accrued leave entitlements, and leave taken (including periods of leave without pay not counted as service for the purposes of long service leave, retention leave, sick leave or recreation leave by the previous employer).

A new employee who has recognised prior service must not be treated as a new employee in terms of access to leave entitlements. Rather the chief executive or delegate is to allow the employee immediate access to existing transferred entitlements (if any), subject to operational considerations.

Sick leave

In calculating sick leave entitlements for the period of service prior to employment in the South Australian public sector, such entitlements shall not exceed the entitlements which would have been due to an employee to whom the provisions of the PS Act applies for the same period, with appropriate adjustments made for leave actually taken during the period of service.

If the sick leave entitlements for the period of recognised service prior relevant public sector employment exceeds the credit which would have been available to an employee to whom the provisions of the PS Act apply over that period, then the recognised sick leave from prior service must be reduced accordingly (down to a minimum of zero hours).

If there were no specific entitlements or records kept of sick leave under a previous employer, then the sick leave entitlement must be calculated as if the employee had been employed in employment to which the PS Act applied with a deducted assumed usage figure of 37.5 hours per financial year.

Recreation leave

When an employee is first employed in the South Australian public sector, the date of commencement will normally be recorded as the start of his/her service year for the purposes of calculating the accrual of recreation leave entitlements.

However, when previous service with another non-public sector employer(s) or public sector agency(ies) is recognised under this Determination, the following will apply when determining the start of the service year and accrual of recreation leave entitlements.

- If an employee was eligible to receive a payment for the value of accrued recreation leave entitlements from their previous employer(s) or employing agency(ies) and elected that monies to the value of the accrued recreation leave entitlements was transferred to the new employing agency then that accrued recreation leave (in hours) will be recorded as a starting balance of recreation leave and will be available to the employee during their public sector employment, subject to the PS Act and PS Regulations conditions for taking recreation leave and Section C - Recreation Leave.
- In cases where accrued leave from previous relevant employment has been transferred to a new employing agency, or the employee has received a payment for the value of accrued recreation leave, then the start of the service year for the purpose of calculating the accrual of recreation leave in the public sector employment shall be backdated to include any period of recognised service of the employee and which was not eligible to be paid out (e.g. non completed months or years of service).

If an employee has received a payment for the value of accrued recreation leave entitlements from their previous employer or employing agency, those entitlements are no longer available to the employee although the service will be recognised as effective service for the purposes of accruing future entitlements (in accordance with above requirements).

Long service leave

The date an employee commences employment in the South Australian public sector is normally recorded as the date of entry for the purposes of effective service for the purpose of accruing long service leave entitlements.

However, when previous service with another non-public sector employer or public sector agency is recognised under this Determination the following will apply when determining the employee's entitlements:

- if service is actually continuous and there have not been any periods not counted as service for the purpose of accruing long service leave by the previous employer(s) or employing agency(ies), the date of entry for long service leave is the date of the employee's commencement with the earliest relevant employer or employing agency, or
- to take account of any breaks in service which have not been accepted for the continuity of service the new employing agency must advance the date for the accrual of long service leave entitlements by the number of calendar days in any relevant break of service.

The period of effective service with the previous employer or public sector agency will be recorded.

If an employee has received a payment for the value of accrued long service leave entitlements from their previous employer or employing agency, those entitlements are no longer available to the employee, although the service will be recognised as effective service for the purposes of accruing future entitlements (in accordance with above requirements).

If an employee was eligible to receive a payment for the value of accrued long service leave entitlements from their previous employer or employing agency and elected that monies be transferred to the new employing agency, then that accrued long service leave (in calendar days) will be recorded as a starting balance of long service leave and will be available to the employee during their employment subject to the PS Act and PS Regulations (refer to Section D – Long Service Leave).

Retention leave

In determining if an employee has completed 15 or more years of effective service to be eligible for retention leave (refer to Section E – Public Sector Skills and Experience Retention Entitlement), the public sector agency will include previous service that has been recognised for the purposes of long service leave.

The entitlement to retention leave will accrue from the date of employment with the relevant public sector agency. Retention leave does not accrue from any earlier date.

6. LEAVE LIABILITIES

Engagement in employment under Part 7 of the PS Act

If an employee employed under Part 7 of the PS Act is, transferred (either at the initiative of the employee (i.e. by accepting an offer of employment) or at the initiative of a chief executive or agency head) to different employment under Part 7 of the PS Act, in another public service agency, then any existing leave entitlements will follow the employee and must be transferred and made available to the employee on the conditions for the taking of leave by employees in the relevant class of employment.

This applies to transfer or assignment on a term or temporary basis for any duration. No monies are required to be transferred to the new public service agency.

The employee is not entitled to receive payment in respect of the value of the accrued leave entitlements in these circumstances.

Termination of employment under Part 7 of the PS Act or transfer to other public sector employment

If an employee's employment under Part 7 of the PS Act is terminated (whether by a chief executive, agency head or delegate or by resignation of the employee), the employee will be entitled to be paid monies to the value of any accrued recreation leave, long service and retention leave entitlements.

Alternative situations are:

- If an employee transfers from employment under Part 7 of the PS Act in one agency to take up public sector employment in another public sector agency that is not under Part 7 of the PS Act, the employee may elect to have any existing leave entitlements transferred and made available on the conditions for the taking of leave by employees in the relevant classification of employment. Monies for the value of accrued leave entitlements are to be transferred to the employing public sector agency.
- If an employee transfers from employment in one public sector agency that is not under Part 7 of the PS Act to take up employment under Part 7 of the PS Act in another public sector agency, the employee may elect to have any existing leave entitlements transferred and made available on the conditions for the taking of leave by employees in the relevant class of employment and direct that the agency they are transferring from transfer monies for the value of accrued leave entitlements to the new public sector employing agency; or alternatively, in the case of a permanent transfer, that they be paid for the value of accrued recreation leave, long service leave and retention leave entitlements.

The decision as to which alternative is appropriate lies with the employee. Chief executives, agency heads or delegates should ensure that employees in such situations are aware of the available options. It should be noted that a long service leave or retention leave liability does not exist for the employee until the employee completes the relevant number of years' effective service (7 years for long service leave, 15 years for retention leave).

Note that in the case of employees transferring from employment under Part 7 of the PS Act to employment not covered by that Part of the PS Act in an incorporated hospital or health centre under section 34 of the *Health Care Act 2008*, the employee cannot receive a payment in respect of the value of accrued leave entitlements as section 35(2) of the *Health Care Act 2008* specifically prohibits this from occurring. In such cases the previous employing public sector agency will transfer monies reflecting existing recreation leave, long service leave and retention leave entitlements to the Department of Health and Wellbeing.

7. PAYMENT FOR THE VALUE OF ACCRUED RECREATION, LONG SERVICE OR RETENTION LEAVE ENTITLEMENTS

When an employee to which this Determination applies dies or ceases to be employed for any reason, payment must be made for the value of any accrued entitlement to recreation, long service leave, and retention leave. No payment is to be made in lieu of accrued sick leave.

Payment in respect of recreation leave loading on termination

Upon termination of employment (for any reason) a person formerly employed as a public sector employee must be paid for the value of any entitlement to recreation leave loading. The person must repay, and the public sector agency is bound to seek to recover, any recreation leave loading paid to the employee in respect of any period of service which has not been performed by the employee at the time they cease to be an employee.

Payment in lieu of leave upon death of an employee

If an employee who has an entitlement to recreation leave, long service leave or retention leave dies, payment for the value of the leave is to be made as provided below.

Recreation leave

Payment of monies to the value of accrued recreation leave entitlements of an employee who dies is to be made to a dependent member of the employee's family who was wholly or partly dependent on the earnings of the deceased employee at the time of death.

For the purposes of payment of the value of accrued recreation leave, family members include spouse or domestic partner, children, step-children, parents, step-parents, grandparents, grandchildren, brothers, sisters, half-brothers and half-sisters. The family is to be asked by a chief executive, agency head or delegate to supply relevant details and if appropriate indicate their dependency on the deceased employee. Refer to Appendix 1 for details which should be taken into consideration.

If all dependents request payment to one named dependent, payment to that person may be authorised. If the spouse or domestic partner and young children are dependent, payment may be authorised to the spouse or domestic partner on the assumption that they will continue to accept responsibility for the care of the children.

If the only dependents are children under the age of 18, payment is to be made to the Public Trustee upon trust for the children during their minority.

If there are no dependents or difficulties arise in determining whether there are dependents, or who are the dependents, payment may be authorised to the employee's personal representatives, pursuant to Schedule 1, Part 4 section 5, (5) of the PS Act subject to production of a Grant of Probate or Letters of Administration.

No payment may be made to an employee in lieu of accrued recreation leave during employment.

Long service leave and retention leave

For the purposes of payment of monies to the value of accrued long service leave or retention leave entitlement of an employee who dies, "dependent" means a member of the employee's family who were wholly or in part dependent on the earnings of the deceased employee at the time of death. "Family members" include spouse or domestic partner, children, and step-children. Payment to other dependents which include parents, step-parents, grandparents, grandchildren, brothers, sisters, half-brothers and half-sisters can be made on written consent of the legal personal representative of the deceased

employee. The family is to be asked by a chief executive, agency head or delegate to supply relevant details and if appropriate indicate their dependency on the deceased employee. Refer to Appendix 1 for details which should be taken into consideration.

If all dependents request payment to one dependent, payment to that person may be authorised. If the spouse or domestic partner and young children are dependent, payment may be authorised to the spouse or domestic partner on the assumption that they will continue to accept responsibility for the care of the children.

If the only dependents are children under the age of 18, payment is to be made to the Public Trustee upon trust for the children during their minority.

If there are no dependents or difficulties arise in determining whether there are dependents, or who are the dependents, payment may be authorised to the employee's personal representatives pursuant to Schedule 1, Part 6 section 9, (2) of the PS Act, subject to production of a Grant of Probate or Letters of Administration.

Payment in lieu of long service leave while remaining an employee

Schedule 1 Part 6 section 9 (1) of the PS Act provides that an employee may apply to the chief executive, agency head or delegate to receive a payment in lieu of a period of long service leave while remaining an employee. Further details regarding an employee's entitlement to make an application for payment in lieu of leave can be sought from the applicable Human Resources in an agency.

8. CALCULATION OF PAYMENT

Effective service

Payment of monies to the value of accrued recreation, long service or retention leave entitlements is to be based on completed months of service/effective service. In the case of payment in lieu of long service leave for employees pursuant to Schedule 1 Part 6, Section 9, (1) of the PS Act, payment may only be made for completed years of effective service.

Payment in lieu of leave does not extend service for the purposes of determining leave entitlements.

Salary and allowances

Payment of monies to the value of accrued recreation, long service or retention leave entitlements must be based on the normal salary and allowances that would have been payable if that leave had commenced on the working day (for that employee) immediately following the last day of service.

No allowance is to be made for any increase that would have occurred during such nominal leave.

Note that for employees on salary sacrifice arrangements, the salary for this purpose will be that of the employee if they had not entered into a salary sacrifice agreement.

Repayment of leave liability

An employee must repay the monetary value of leave granted in respect of which service has not been given (i.e. leave taken in advance) at the time employment ends. Any repayment is to be calculated at the rate of pay that applied when the employee's employment ceased. No adjustment is to be made if recreation leave was taken in advance and the employee died before the entitlement to the leave accrued.

Termination of employment

If the employment of a public sector employee has been terminated in circumstances where they have a liability to the Crown in connection with their employment as a public sector employee, an amount otherwise payable to the employee may be applied in or towards the satisfaction of the liability. Further, an amount may be lawfully withheld pending the determination of proceedings relating to a person's liability. See section 70 of the PS Act. Where an amount otherwise payable to an employee is insufficient, there is an obligation on a chief executive or agency head to seek to recover the debt owed by the former employee.

APPENDIX 1: DECLARATION IN RELATION TO PAYMENT TO DEPENDENTS

IN THE MATTER OF DECEASED AND AN APPLICATION UNDER THE *PUBLIC SECTOR ACT 2009* FOR PAYMENT OF MONEY DUE ON ACCOUNT OF AN ENTITLEMENT TO LONG SERVICE LEAVE AND/OR RECREATION LEAVE AND/OR RETENTION LEAVE (AFTER 1 JULY 2013).

I, of declare that:
..... late of who died on the
..... day of 20..... was at the time of his/her decease an employee who had an entitlement to long service leave and/or recreation leave and/or retention leave (after 1 July 2013) under the provisions of the *Public Sector Act 2009*. To the best of my knowledge, information and belief, the undermentioned persons are the only members of the family of the deceased employee:

.....
.....
.....
.....

To the best of my knowledge, information and belief the following are the members of the family who were wholly or in part dependent upon the earnings of the deceased employee at the time of their death:

.....
.....
.....
.....

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act, 1936*

Duty Stamp

Declared at)
the day of20.....)
before meJP)

IN THE MATTER OF

DECEASED AND AN APPLICATION UNDER THE *PUBLIC SECTOR ACT 2009*

We

..... are the only members
of the family of deceased, late of

The said

..... were at that time in
part so dependent.

We, the said members of the family hereby request that all moneys payable to the dependents of the
deceased employee on account of an entitlement to long service leave and/or recreation leave by virtue
of the said Act, be paid to:

In the following proportions, viz:

for their respective use and benefit absolutely.

Dated this day of 20.....

APPENDIX 2: RECOGNITION OF PRIOR SERVICE EXAMPLES OF CALCULATION OF ANNUAL LEAVE, SICK LEAVE AND LONG SERVICE LEAVE

Example 1:

An employee who was an officer of the Victorian Public Service (VPS) from 1 July 2005 to 30 June 2010 becomes an employee of a South Australian public sector agency on 1 July 2010.

During their period of service with the VPS the employee took 17 days and 5 hours (132.5 hours) of sick leave.

Upon termination of employment with the VPS the employee was eligible to receive a payment in lieu of recreation leave and had 57.5 hours of recreation leave accrued. Recreation leave at the VPS was accrued fortnightly. The last completed fortnight of service was 24 June 2010.

There have been a total of 23 days not counting as service for the purposes of accruing long service leave.

Sick Leave

Sick leave entitlement is calculated as the entitlement had the provisions of the PS Act/this Determination applied to the employee during their period of service with the VPS, minus any sick leave actually taken during the period:

- entitlement to sick leave under the PS Act = 72 days (12 working days per year of service) or 540 hours, minus
- sick leave actually taken = 17 days and 5 hours or 132.5 hours.

Upon commencement with the SA public sector agency the employee would therefore be credited with 407.5 hours or 54.3 days sick leave.

Recreation Leave

If the employee has reached agreement with the chief executive, agency head or delegate to have the monies to the value of the accrued recreation leave entitlement transferred to the SA public sector agency:

- the employee's starting balance for recreation leave would be 57.5 hours
- this recreation leave balance would be available to the employee from commencement with the SA Public Sector agency, subject to the relevant provisions
- the start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act would be 25 June 2010.

If the employee received payment in lieu of recreation leave entitlements, they would commence with the SA Public Sector agency with a starting balance of 0 hours. The start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act in the SA public sector employment would be 25 June 2010.

Long Service Leave

Date of entry for the purposes of accruing long service leave is the date of the employee commencement with the VPS (1 July 2005) advanced by 23 days for days not counting as service = 24 July 2005.

Assuming there are no future breaks in service or days not counting as service the employee would be eligible to take 63 days of Long Service Leave from 24 July 2012.

Retention Leave

Assuming there are no future breaks in service or days not counting as service the employee would be eligible for retention leave from 24 July 2020.

Example 2:

An employee who was an officer of the Commonwealth from 1 July 2005 to 30 June 2012 becomes an employee of a South Australian public sector agency on 1 July 2012.

During their period of service with the Commonwealth the employee took 103 days and 3.5 hours (776 hours) of sick leave.

Upon termination of employment with the Commonwealth the employee was eligible to receive a payment in lieu of recreation leave and had 15.5 hours of recreation leave accrued. Recreation leave at the Commonwealth was accrued monthly. The last completed month of service for recreation leave accrual was 18 June 2012.

There have not been any periods not counting as service for the purposes of accruing long service leave and the employee is not eligible to receive a payment in lieu of long service leave entitlements.

Sick Leave

Sick leave entitlement is calculated as the entitlement, had the provisions of the PS Act/this Determination applied to the employee during their period of service with the Commonwealth, minus any sick leave actually taken during the period:

- entitlement to sick leave under the PS Act = 84 days (12 working days per year of service) or 630 hours, minus
- sick leave actually taken = 103 days and 3.5 hours or 776 hours.

Upon commencement with the SA public sector agency the employee has exceeded the amount of leave they would have been entitled to under the PS Act/this Determination and would therefore commence employment with the SA public sector agency with zero credited hours.

Recreation Leave

If the employee has reached agreement with the chief executive, agency head or delegate to have the monies to the value of the accrued recreation leave entitlement transferred to the SA public sector agency:

- the employee's starting balance for recreation leave would be 15.5 hours
- this recreation leave balance would be available to the employee from commencement with the SA Public Sector agency, subject to the relevant provisions
- the start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act/this Determination would be 19 June 2012.

If the employee received payment in lieu of recreation leave entitlements, they would commence with the SA Public Sector agency with a starting balance of 0 hours. The start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act/this Determination would be 19 June 2012.

Long Service Leave

Date of entry for the purposes of accruing long service leave is the date of the employee commencement with the Commonwealth = 1 July 2005.

The employee would be eligible to take 63 days of Long Service Leave upon commencement with the SA public sector agency. There is no requirement that any leave liability be transferred from the Commonwealth agency to the SA public sector agency.

Retention Leave

Assuming there are no future breaks in service or days not counting as service the employee would be eligible for retention leave from 1/7/2020.

Example 3:

An employee who was an officer of a local government authority (LGA) from 1 July 2004 to 30 June 2015 becomes an employee of a South Australian public sector agency on 1 July 2015.

During their period of service with the LGA the employee took 42 days and 5 hours (320 hours) of sick leave.

Upon termination of employment with the LGA the employee was eligible to receive a payment in lieu of recreation leave and had 7.5 hours of recreation leave accrued. Recreation leave at the LGA was accrued fortnightly. The last completed month of service for recreation leave accrual was 25 June 2015.

The employee has 102 days accrued long service leave and is eligible to receive a payment in lieu of long service leave entitlements. There have not been any periods not counting as service for the purposes of accruing long service leave.

Sick Leave

Sick leave entitlement is calculated as the entitlement, had the provisions of the PS Act applied to the employee during their period of service with the LGA, minus any sick leave actually taken during the period:

- entitlement to sick leave under the PS Act/this Determination = 132 days (12 working days per year of service) or 990 hours, minus
- sick leave actually taken = 42 days and 5 hours or 320 hours.

Upon commencement with the SA public sector agency the employee would therefore be credited with 670 hours or 89.3 days of sick leave.

Recreation Leave

If the employee has reached agreement with the chief executive, agency head or delegate to have the monies to the value of the accrued recreation leave entitlement transferred to the SA public sector agency:

- the employee's starting balance for recreation leave would be 7.5 hours
- this recreation leave balance would be available to the employee from commencement with the SA Public Sector agency, subject to the relevant provisions
- the start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act would be 26 June 2015.

If the employee received payment in lieu of recreation leave entitlements, they would commence with the SA Public Sector agency with a starting balance of 0 hours. The start of the employee's service year for the purpose of calculating accrual of recreation leave under the PS Act/this Determination would be 26 June 2015.

Long Service Leave

Date of entry for the purposes of accruing long service leave is the date of the employee commencement with the LGA = 1 July 2004.

If the employee has reached agreement with the chief executive, agency head or delegate to have the monies to the value of the accrued long service leave entitlement transferred to the SA public sector agency:

- the employee's starting balance for long service leave would be 102 calendar days
- this long service leave balance would be available to the employee from commencement with the SA public sector agency, subject to the relevant provisions
- the date of entry for the purpose of calculating accrual of long service leave under the PS Act/this Determination would be 1 July 2004.

If the employee received payment in lieu of long service leave entitlements upon termination of employment with the LGA:

- the employee would commence with the SA public sector agency with a starting balance of 0 hours long service leave
- the employee's date of entry for the purposes of long service leave would be 1 July 2004
- the employee will accrue and be eligible to take 9 days of long service leave from 1 July 2016.

Retention Leave

Assuming there are no future breaks in service or days not counting as service the employee would be eligible for retention leave from 1/7/2019.

Glossary

1. EFFECTIVE SERVICE

“Effective service” means the period of the employee’s continuous service in the employment of the public sector agency. When previous service with an employer is recognised for long service leave or retention leave purposes the date of the first year of effective service will be adjusted in accordance with this Determination.

2. INDUSTRIAL INSTRUMENT

“Industrial instrument” means an award or enterprise agreement made pursuant to the FW Act.

3. NORMAL SALARY

“Normal salary” means the salary payable to the employee at the time of taking leave and also includes any additional duties allowance approved pursuant to Section 50 of the PS Act.

4. RECREATION LEAVE

“Recreation leave” can be used interchangeably with “annual leave”, as expressed within industrial instruments.

5. SERVICE MONTH

“Service month” and “completed month of service” in relation to an employee for the purposes of sick leave, recreation leave and retention leave means a period of 1 calendar month from the commencement of the employee’s service, in the public service or in public sector employment to which section 16 of the PS Act applies, or any of the succeeding periods of 1 calendar month.

6. SERVICE YEAR

“Service year” in relation to an employee for the purposes of sick leave and special leave means the period of 1 calendar year from the commencement of the employee’s service, in the public service or in public sector employment to which section 16 of the PS Act applies, or any of the succeeding periods of 1 calendar year.

A service year is not extended by a period of leave without pay, though leave entitlements may be reduced by any leave without pay that is not recognised as service in this Determination.

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Released: 1 September 2023