

# EXPLANATORY SHEET

## PUBLIC SECTOR SKILLS AND EXPERIENCE RETENTION ENTITLEMENT<sup>1</sup>

### 1 SKILLS AND EXPERIENCE RETENTION ENTITLEMENT

- 1.1 This document provides explanatory information about the new Public Sector Skills and Experience Retention Entitlement (“retention leave”).
- 1.2 Legislation
- *Statutes Amendment and Repeal (Budget 2012) Act 2012;*
  - *Public Sector Act 2009; Public Sector Regulations 2010; and Public Sector (Budget 2012) (Skills and Experience Retention Leave) Proclamation 2012;*
  - *Education Act 1972; Education Regulations 2012; and Education (Budget 2012) (Skills and Experience Retention Leave) Proclamation 2012; and*
  - *Parliament (Joint Services) Act 1985; Parliament (Joint Services) (Retention Entitlement) Regulation 2012; and Parliament (Joint Services) (Budget 2012) (Skills and Experience Retention Leave) Proclamation 2012.*
- 1.3 Other
- Commissioner for Public Sector Employment Determination 3.1: Employment Conditions – Leave; Attachment D (“CD 3.1”).
  - Agency human resources personnel.

### 2 ELIGIBLE EMPLOYEE

- 2.1 An “eligible employee” is a public sector employee who has completed 15 or more years of effective service and who is either:
- employed under the *Education Act 1972, Parliament (Joint Services) Act 1985 or Public Sector Act 2009 (“PS Act”)*; or
  - subject to the long service leave entitlements provided in the PS Act, either as a result of regulation 13 of the *Public Sector Regulations 2010* or some other industrial instrument (i.e. an Enterprise Agreement).
- 2.2 Employees in the public health sector (apart from public servants employed in the “head office” of the Department for Health and Ageing) derive their entitlement to retention leave as a consequence of their entitlement to long service leave pursuant to the PS Act. Refer to CD 3.1, Attachment C.

### 3 RATE OF ACCRUAL

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

Financial year	Accrual per month of effective service	Maximum accrual per year
2011–12	1/6 working day	up to a maximum of two working days (where an employee has, or attains, 15 years of effective service during 2011/12 financial year and is an employee on 1 July 2012).
2012–13	1/6 working day	up to a maximum of two working days
2013–14	1/4 working day	up to a maximum of three working days
2014–15 onwards	1/3 working day	up to a maximum of four working days

<sup>1</sup> This Explanatory Sheet provides additional information about the effect of the new Public Sector Skills and Experience Retention Entitlement and is to be read as a whole because more than one of the explanatory elements may be applicable. Reference should also be made to the Commissioner for Public Sector Determination 3.1: Employment Conditions – Leave (which can be located at the Office of Public Employment and Review website: [www.oper.sa.gov.au](http://www.oper.sa.gov.au)) and to the applicable legislation and regulations.

## 4 APPLYING / TAKING RETENTION LEAVE

- 4.1 *Transition 2011/2012:* An employee who, during the 2011/2012 financial year has, or attains, 15 years of effective service, and is an employee on 1 July 2012 will qualify for an additional retention leave entitlement equal to  $\frac{1}{6}$  working days leave for each month of effective service completed during that financial year.
- 4.2 The new retention leave entitlements begin accruing from 1 July 2012, however, eligible employees can only apply for and take retention leave (or convert the leave to a monetary payment) on or after 1 July 2013.
- 4.3 During each financial year, an eligible employee will accrue an amount of retention leave for each month of effective service completed during that financial year.
- 4.4 An eligible employee may apply to take retention leave once the employee has accrued an amount of leave equivalent to one working day.
- 4.5 Retention leave must be applied for and taken as a whole working day.
- 4.6 The relevant forms for applying for retention leave will available from individual agencies.

## 5 REMUNERATION DURING RETENTION LEAVE

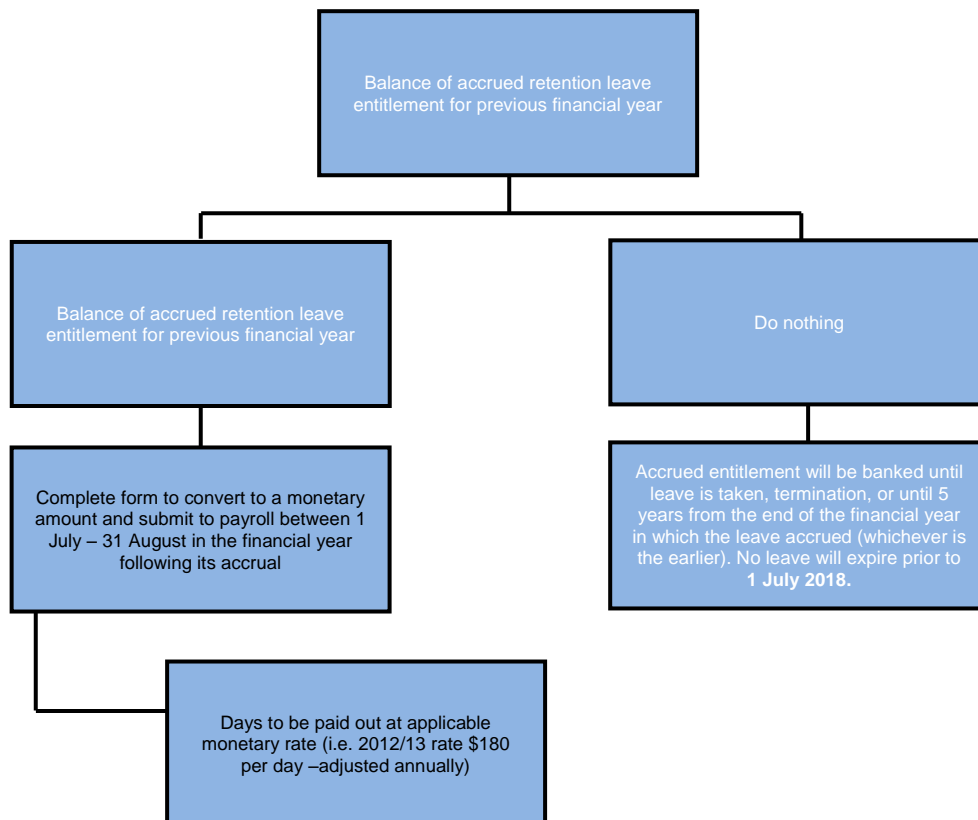
- 5.1 Remuneration: During a period of retention leave an employee is entitled to receive their normal salary and the following allowances (if applicable):
- Whyalla cost of living allowance;
  - Locality allowance;
  - Qualification, proficiency and skill allowance (including first aid allowance);
  - Additional duties allowance where it is intended that the additional duties will continue to be performed when the employee returns from retention leave; and
  - Casual loading (if applicable).
- 5.2 Payment in Advance: An employee who is granted retention leave may elect to be paid the total remuneration which would be payable on the paydays during the retention leave on the payday prior to the leave being taken.

## 6 CONVERT ENTITLEMENT TO A MONETARY AMOUNT

### Period to convert to a monetary amount: 1 July – 31 August

- 6.1 When: Between 1 July and 31 August each year an employee may elect to convert the retention leave accrued in the preceding financial year to a monetary payment.
- 6.2 The monetary payment amount is fixed by Regulation and will be indexed by CPI each year. The current monetary amount for each working day is \$180 (which will be reduced where a portion of a working day is converted).
- 6.3 How: To make an election to receive a payment instead of taking the leave, an employee must complete and submit the appropriate form to the relevant agency with responsibility for payroll services (e.g. Shared Services SA or agency specific payroll services as applicable) by 31 August following the financial year in which the entitlement accrued.
- 6.4 The election to convert retention leave to a monetary payment is limited to the balance of the retention leave accrued in the previous financial year.
- 6.5 An employee with retention leave accrued from any earlier financial year is not able to elect to convert that earlier leave to a monetary amount. For example, an employee with a balance of 3 days accrued during 2013–14, and 4 days accrued during 2014-15 may elect during the period 1 July and 31 August 2015 to convert the 4 days retention leave accrued during 2014-15 only.

- 6.6 An exception to the above applies to leave accrued during 2011-12 financial year. Leave accrued during both the 2011-12 and 2012-13 financial years may be converted to a monetary amount between 1 July and 31 August 2013.
- 6.7 The election to convert the retention leave to a monetary amount must be made for the entire balance accrued during the previous financial year, even where that entitlement is not equivalent to 1 whole working day. For example, if an eligible employee accrues 1 1/6 working days leave during the 2012-13 financial year, and that employee wishes to convert that entitlement to a monetary amount, they must convert the whole 1 1/6 working days leave.
- 6.8 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.
- 6.9 The following is an example of how this process will occur:



## 7 PART-TIME AND CASUAL EMPLOYEES

- 7.1 Part time and 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.
- 7.2 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.
- 7.3 Examples of how retention leave is calculated for part time and casual employees are provided in CD 3.1 Attachment D, Appendix 2.
- 7.4 Casual employees are entitled to accrue and take retention leave provided they meet the normal requirements for effective service. Further details on casual employees' eligibility requirements (e.g. breaks in service) can be found in CD 3.1 Attachment D.

## **8 LEAVE ENTITLEMENT NOT TAKEN WITHIN 5 YEARS (FIVE YEAR RULE)**

- 8.1 A retention leave entitlement accrued within a financial year must, if not converted into a monetary amount as indicated in paragraph 6 above, be taken within 5 years of the accrual.
- 8.2 Section 33(3) of the *Statutes Amendment and Repeal (Budget 2012) Act 2012* provides that if a retention leave entitlement that has accrued is not taken within 5 years of the end of the financial year in which that leave accrued, it will lapse. That is, the entitlement will cease to be applicable and will in effect be lost. A sum equal to the monetary value of any entitlement that is lost will not be payable.
- 8.3 Transition: No accrued entitlement can lapse before 1 July 2018, to allow for retention leave accrued during the transitional period for the 2011/2012 financial year.
- 8.4 Example: An eligible employee may have up to 4 working days retention leave entitlement at the conclusion of the 2012-13 financial year (2 days accrued during 2011-12, and 2 days accrued during 2012-13). In the event that the employee has not converted retention leave to a monetary amount or taken all of that retention leave before 1 July 2018 then the 4 days retention leave will be lost.

## **9 SPECIAL LEAVE WITHOUT PAY**

- 9.1 Effective Service Date: Time taken as special leave without pay in excess of one calendar month is not counted for the purposes of retention leave accruals. Special leave without pay in excess of one calendar month moves the effective service date forward (i.e. it becomes a later date) by the number of calendar days from the first day of leave without pay not to count (i.e. in excess of the equivalent of one calendar month) to the calendar day before the employee returns to work.
- 9.2 For further information see CD 3.1 - Effects of Special Leave Without Pay.

## **10 WORKERS COMPENSATION**

- 10.1 Employees on workers compensation are, subject to conditions set out in CD 3.1: Employment Conditions – Leave, eligible to accrue retention leave.
- 10.2 If an employee is absent from work, or working reduced hours while engaged in a rehabilitation and return to work program, accrual of retention leave shall be based on the employee's pre-injury employment status.
- 10.3 If a person is in receipt of workers compensation weekly payments, but is not employed on and after 1 July 2012, then the employee will not be eligible to accrue retention leave.

## **11 TAXATION AND SUPERANNUATION**

- 11.1 Retention leave will be subject to applicable taxation in line with the relevant legislation.
- 11.2 Retention leave will be subject to the applicable superannuation legislation.