



## Leave and public holidays

### Background

1. The Enterprise Agreement provides for the following types of leave:
  - Annual leave, including Excess (Canberra) Travel Leave
  - Personal leave
  - Unpaid carer's leave
  - Compassionate leave
  - Community service leave
  - Miscellaneous leave
  - Other leave, including study leave (refer to separate Guideline 'Studies Assistance')
  - Leave for reasons of family and/or domestic violence (refer to **Attachment A**)
  - Long service leave
  - Maternity leave
  - Adoption leave
  - Supporting partner leave
  - Leave without pay, including unpaid parental leave
  - Public holidays, including annual close down.
2. This Guideline also includes:
  - Substitution of Public Holidays (refer to **Attachment B**)
3. Employees affected by or at risk of experiencing family and/or domestic violence who require time off work have access to a range of leave options, including miscellaneous leave, personal leave and/or flexible working arrangements, to enable flexibility in the provision of leave that is appropriate to individual circumstances (refer to **Attachment A**).
4. Eligible employees may access the Paid Parental Leave Scheme (PPL Scheme) or Dad and Partner Pay (DAPP) in addition to entitlements to paid and unpaid leave provided under the Enterprise Agreement. Some information on the PPL Scheme and DAPP is provided below, but employees should contact Services Australia for further information (refer to paragraphs 69-91).

5. Employees who will be the primary carer of a child born through a lawful surrogacy arrangement are entitled to paid adoption leave (refer to paragraphs 102-109).
6. Employees have access to paid and unpaid leave following a miscarriage, stillbirth or post-partum death of a child (refer to paragraphs 115-121).
7. Employees have access to paid and unpaid leave for cultural and/or ceremonial purposes (refer to paragraphs 127-129).
8. With the exception of long service leave, paid leave provided under the Enterprise Agreement is not available to casual employees.
9. The separate Guidelines 'Ongoing, Non-ongoing and Casual Employment' and 'Recognition of Prior Service' also provide relevant information.

## Leave applications

- ▶ Enterprise Agreement clause 36
10. Employees are to ensure that leave applications, through PEMS or the hardcopy leave form, are submitted to the employing Member, or authorised person, as soon as practicable for approval. Hardcopy forms must be immediately forwarded to the Department following approval.

## Approval of leave by the Department of Finance during deferral of termination

11. Where the employing Member has ceased to have employment powers under the relevant Part of the MOP(S) Act and the employment of that person's employees has been deemed not to have terminated by virtue of a direction made under subsections 16(5) or 23(4) of the MOP(S) Act, the Department may approve leave under the terms of the Enterprise Agreement and this Guideline.

## Annual leave

- ▶ Enterprise Agreement clause 37
12. Annual leave accrues daily at the rate of four weeks (152 hours) per year of service for full-time employees. The accrual of annual leave is pro rata for part-time employees. As a guide, the accrual rate for a full-time employee, working 38 hours per week, is approximately 12 hours 40 minutes per month of eligible service - the monthly figure varies slightly from month to month depending on the number of calendar days in the month. Annual leave may be taken as it accrues.

13. There is no limit on the amount of annual leave that may be accrued by employees. However, the purpose of annual leave is to enable employees to have sufficient breaks from the workplace to enable them to perform effectively.
14. All decisions about taking annual leave, apart from decisions made under clause 37.7 (where an employing Member may direct an employee to take a period of annual leave in certain circumstances), should be agreed between the employee and the employing Member, taking into account both the needs and wishes of the employee and the requirements of the workplace. Where reasonable workplace requirements prevent the employing Member from agreeing to a period of annual leave as requested, the reasons for the decision should be discussed with the employee and alternative arrangements agreed.
15. In accordance with clause 37.4 of the Enterprise Agreement, employees may take a period of annual leave at full pay, half pay or a combination of the two.

### Excess (Canberra) Travel Leave (ECTL)

- ▶ Enterprise Agreement clause 54.3-54.5
  - ▶ [Form 41 – Additional Annual Leave Credit](#)
  - ▶ Refer to [Excess \(Canberra\) Travel Leave page](#)
16. Clause 54.3 entitles employees who are required to travel from their work base in remote and/or rural locations to Canberra on a Sunday or public holiday in their work base for a Parliamentary sitting to claim a half-day of additional annual leave for each occasion of eligible travel.
  17. A Parliamentary sitting is defined in clause 54.55 of the Enterprise Agreement to mean the following:
    - a. a sitting of either House of Parliament, including a joint sitting; and
    - b. Senate Estimatesbut a Parliamentary sitting does not include Senate Estimates spill-over or additional hearings or other Parliamentary Committee hearings.
  18. An employee is eligible to claim ECTL for travel from their work base to Canberra:
    - a. on a Sunday for a Parliamentary sitting commencing on a Monday or a Tuesday; or
    - b. on a public holiday in their work base for a Parliamentary sitting commencing on the following day.
  19. The number of days ECTL that may be claimed each year will vary with the number of Parliamentary sittings each year. There is no limit to the number of days an employee can claim for ECTL per year (e.g. if there are 20 Parliamentary sittings in one year, an employee would be able to claim up to 10 days' ECTL should they undertake eligible travel for every Parliamentary sitting).
  20. Claims for ECTL must be received by the Department within six months after the travel has been completed or the additional leave will not be provided.

## Personal leave

► Enterprise Agreement clause 38

21. For full-time employees, a credit of 15 days is available from the date of commencement of employment and a further 15 days accrues on completion of each further 12 months of eligible service. Part-time employees are entitled to a pro rata accrual of personal leave.
22. Although there is no cap on the period of personal leave that may be approved for caring purposes (up to the limit of the employee's available leave credit), it is expected that employees will access carer's leave reasonably and responsibly in accordance with clause 38.3 of the Enterprise Agreement (e.g. personal leave is not available for employees to care for healthy children during school holiday periods).
23. Employees may take personal leave at either full pay or half pay.
24. When applying for personal leave, employees must indicate the type of personal leave taken/to be taken from the list below:
  - a. personal illness or injury;
  - b. carer's leave (illness/injury); or
  - c. carer's leave (emergency).
25. Any personal leave in respect of the personal illness or injury of the employee taken in excess of an employee's credit, within the limits set out in paragraph 29, will be considered personal leave without pay, which counts as service.
26. Consistent with section 107(3) of the *Fair Work Act 2009*, it is a matter for employing Members to determine when and/or whether a medical certificate or other evidence, such as a statutory declaration, must be provided by the employee, to the employing Member, to cover an absence of personal leave, including carer's leave. Options could include a requirement that employees provide a certificate for any absence likely to exceed a certain number of consecutive days and/or after a specified number of days of personal leave per year has been used. Requirements should be advised to employees as soon as possible after commencing employment and/or should the employing Member change those requirements.
27. A medical certificate or statutory declaration must be provided to the Department where an employee seeks to have any form of paid leave (e.g. annual or long service leave, re-credited in order to use personal leave). A medical certificate is required to cover any absence associated with a workers' compensation claim, as well as for absences on personal leave due to illness during the 52 week absence period allowed by the *Maternity Leave (Commonwealth Employees) Act 1973*.
28. In the following circumstances, an employee may be required to undergo a medical examination to determine his/her fitness for duty:
  - a. where the employee is continuously absent due to illness or injury for a period in excess of four weeks; or
  - b. where a report from a treating doctor indicates that the employee is unfit for duty and is likely to remain so for an indefinite period or period of at least four weeks; or

- c. where the employing Member has reason to believe the employee is unfit, for some or all of his/her duties, for an indefinite period or a period of at least four weeks.
29. In the circumstances described in paragraph 27, the employing Member should provide any medical certificates submitted by the employee to the Department.
  30. The maximum continuous absence that can be approved as personal leave to count as service due to non-compensable illness or injury is 52 weeks, unless the employee still has paid personal leave credits remaining in which case the employee can use that paid personal leave in accordance with normal procedures. Other paid or unpaid leave granted during the absence due to personal illness or injury does not break continuity for the 52 week period under this paragraph. Absence due to illness or injury after 52 weeks continuous absence may be granted as leave without pay and will not count as service for any purpose.
  31. Where an employee has exhausted all paid personal leave and continues to be absent on personal illness or injury, they may access available annual and long service leave credits. Any such leave granted will not break continuity for the purposes of paragraph 29. Before long service leave is granted, a report on the employee's state of health may be obtained from the Department's health services provider.
  32. Where an employee has been absent continuously due to illness for more than 52 weeks and subsequently wishes to return to duty, the employee must first be examined by the Department's health services provider to confirm his/her fitness for duty.
  33. Personal leave may be accessed where an employee is affected by or at risk of experiencing family and/or domestic violence (refer to **Attachment A**).

### Unpaid carer's leave

- ▶ Enterprise Agreement clause 39
34. Unpaid carer's leave is available for all employees where personal leave is unavailable. It can be taken as one continuous period or in separate periods agreed between the employee and employing Member.

### Compassionate leave

- ▶ Enterprise Agreement clause 40
35. Compassionate leave may be used in addition to personal leave and miscellaneous leave.
  36. An employee taking compassionate leave must give their employing Member notice as soon as they can (this may be after the leave has started). The employee must tell the employing Member of the period, or expected period, of the leave.

## Community service leave

- ▶ Enterprise Agreement clause 41

37. Eligible community service activities are defined at subsection 109(1) of the *Fair Work Act 2009* as:
- jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - a voluntary emergency management activity (defined in detail at subsections 109(2) and (3) of the *Fair Work Act 2009* and involving dealing with an emergency or disaster as a member of a recognised emergency management body); or
  - an activity prescribed in the *Fair Work Regulations 2009* (no such activities have been prescribed at this date).
38. An employee who wishes to access community service leave must provide their employing Member with notice of the absence for community service activities as soon as practicable before or after the leave has started and advise the employing Member of the period, or expected period, of absence.
39. Where an employee, other than a casual employee, undertakes jury service, the employee must provide evidence to the Department:
- that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
  - of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable to the employee for the period.
- Where the above evidence is not provided, the employee will not be paid community service leave. Where the evidence is provided, the employee's pay will be reduced by the total amount of jury service pay that has been paid or is payable.
40. An application for community service leave must include evidence that the employee is engaging in an eligible community service activity.

## Miscellaneous leave

- ▶ Enterprise Agreement clause 42

- Miscellaneous leave may be accessed where an employee is affected by or at risk of experiencing family and/or domestic violence (refer to **Attachment A**).
- Paid miscellaneous leave may be approved by the employing Member without also requiring approval from the Department in the following circumstances (subject to the stated time limits).
- The National Employment Standards now provide for paid leave for casual employee experiencing family or domestic violence.

Reason for leave request	Reasonable period of absence
Moving house, including approved relocations between localities	1 day
Graduation ceremony for a course approved for studies assistance under the Enterprise Agreement	1 day
An immediate family member or household member contracts or develops a personal illness that poses a serious threat to his or her life, or sustains a personal injury that poses a serious threat to his or her life  (Note: this is in addition to 2 days' compassionate leave in accordance with clause 40)	1 day
Time to attend a funeral of a family member (including but not limited to an immediate family member) household member or friend  (Note: this is in addition to 3 days' compassionate leave in accordance with clause 40)	1 day
Attending to duties and other arrangements relating to the death of a family member (including but not limited to an immediate family member), household member or friend (e.g. an executor of a will; cultural, ceremonial or religious duties)	2 days
Flooding, bushfires, other natural disasters etc	up to 3 days
Workplace relations training where an employee is a delegate of an employee organisation	5 days per year
Family and/or domestic violence	Refer to <b>Attachment A</b>

- The employing Member should not unreasonably refuse to approve to a request by the employee to take paid miscellaneous leave for reasons specified above.
- Where the employing Member considers there are other circumstances where it may be appropriate to approve paid miscellaneous leave, or where the duration of such leave exceeds the periods described above, the approval is subject to both the employing Member and the Department.

46. An application for miscellaneous leave must state the reason for the leave, and appropriate supporting evidence or explanation must be attached to the application form.
47. An employee who accesses miscellaneous leave for workplace relations training should submit the application approved by their employing Member to the Department as soon as possible before the course or seminar occurs, accompanied by evidence that the employee will be attending the course or seminar (e.g. a course booking receipt).

## Other leave

- ▶ Enterprise Agreement clause 43

48. Under clause 43.1 of the Enterprise Agreement:
  - a. Defence Force Service means enlistment or training (including Reserves, but excluding Australian Army, Navy and Air Force Cadets);
  - b. participation in major international multi-disciplinary sporting events means as a competitor representing Australia or as an accredited official at an event such as the Olympic or Commonwealth Games;
  - c. courses of study approved under clause 58.2 of the Enterprise Agreement means those courses approved under the studies assistance provisions (refer to separate Guideline 'Studies Assistance'). Computer systems training, the Professional Development Program and ad hoc training are regarded as time on duty;
  - d. war service sick leave means leave for returned service personnel for various medical or review purposes under the *Veterans' Entitlements Act 1986*; and
  - e. political exchange leave means participation as a delegate on a Political Exchange Program.
49. An application for other leave must state the reason for the leave, and appropriate supporting evidence or explanation must be attached to the application form.

## Long service leave

- ▶ Enterprise Agreement clause 45

50. An employee must have 10 years of qualifying service before becoming eligible for long service leave.
51. Long service leave accrues at the rate of 3/10ths of a month for each year of eligible service. This means that after 10 years of eligible service, an employee will have accrued three months of long service leave. Long service leave continues to accrue at the rate of 3/10ths of a month for each year of eligible service after 10 years.
52. Long service leave is granted in calendar days (i.e. including weekends and public holidays that fall between the start and the end of the leave).



53. Periods of long service leave must be a minimum of seven consecutive calendar days at full pay or 14 consecutive days at half pay. Periods of long service leave may not be broken by other paid leave, although other paid leave may be used at either or both ends of a period of long service leave.
54. Employees ceasing Commonwealth employment after at least 10 years of eligible service receive payment in lieu of unused long service leave.
55. Employees who are 55 years and over and have at least 12 months of eligible service receive pro rata payment in lieu of long service leave upon cessation of employment.
56. Where the employment of an employee with less than 10 years of service, but at least 12 months eligible service, ceases due to retrenchment or ill health, they will receive pro rata payment in lieu of long service leave. Retrenchment includes any termination of employment due to the operation of the MOP(S) Act.

## Maternity leave

- ▶ Enterprise Agreement clause 46

57. The *Maternity Leave (Commonwealth Employees) Act 1973* (the ML Act) does not apply to employees who do not have an entitlement to paid personal leave (i.e. casual employees).
58. The ML Act provides for a maximum period of absence of 52 weeks.
59. Under the ML Act, a person is required to commence maternity leave six weeks before the expected birth of the child. However, subject to providing the Department with written advice from a medical practitioner (a midwife is not a medical practitioner for this purpose) that the employee is fit to continue normal duties, the employing Member may permit the employee to defer the start of the required absence to the date specified by the medical practitioner. The employee is then required to be absent for a period of six weeks commencing on the date of the birth.
60. Where the child is born earlier than six weeks before the expected date of birth, the required absence commences on the date of birth and continues for six weeks. In this case, the 52 week period of maternity leave absence commences from the date of birth.
61. With the permission of the employing Member, the employee may resume duty before the end of the required six week absence, subject to providing written advice from a medical practitioner (a midwife is not a medical practitioner for this purpose) that the employee is fit to do so.
62. The ML Act provides that an eligible employee is entitled to full pay for the first 12 weeks of absence, or such lesser period that is taken. The Enterprise Agreement provides employees entitled to paid maternity leave under the Act with an additional four weeks paid leave to be taken immediately following the period of paid maternity leave provided under the ML Act. This provides a maximum of 16 weeks of paid maternity leave.

63. To be eligible to receive paid maternity leave, an employee must have at least 12 months continuous eligible Commonwealth service. Please note that service during which the employee was not entitled to personal leave is not eligible service for this purpose (e.g. periods during which a loading in lieu of leave was paid).
64. The Enterprise Agreement allows maternity leave to be taken on a half pay basis as an administrative arrangement. Where the leave is taken on half pay, only the first half of the leave will count as service, the second half of the leave is treated as maternity leave without pay and will not count as service.
65. If the employee does not have 12 months continuous eligible service, the employee is still subject to the ML Act and must absent herself from duty during the required absence period. The absence will be without pay but will count as service for all purposes. If the employee completes 12 months continuous eligible service during the first 16 weeks of maternity leave, the employee is entitled to payment for the period between the completion of the qualifying period and the end of the first 16 weeks.
66. By default, leave taken after the first 16 weeks and during the maximum 52 week absence allowed by the ML Act is maternity leave without pay and does not count as service for any purpose. However, where available, other paid leave (e.g. annual leave or long service leave), can be taken instead and such leave will count as service for all purposes. During this period, if personal leave is used on account of the ill health of or injury to the employee, a medical certificate stating the employee is unfit for duty and indicating the condition from which the employee is suffering must be provided to the Department.
67. Applications for maternity leave should be submitted to the Department as soon as possible (at least three months prior to the expected date of birth) and must be accompanied by a written statement from a medical practitioner or midwife specifying the expected date of birth. Upon receiving the application, the Department will provide written advice to the employee of her entitlements, period(s) of required and maximum absences, impact on superannuation contributions and other related matters.
68. If an employee's employment is terminated while on paid maternity leave, or within the period commencing six weeks prior to the expected date of birth (but before the commencement of maternity leave), the employee may be entitled to receive a payment in lieu of the remaining paid maternity leave in certain circumstances in accordance with clauses 46.5 and 46.6 of the Enterprise Agreement. This payment will be reduced by any subsequent entitlement to paid maternity leave with another employer (e.g. if the employee is an APS employee and continues to be entitled to paid maternity leave under the ML Act in relation to the APS employment).

## The Paid Parental Leave Scheme

### ▶ [Services Australia – Parental Leave Pay](#)

69. The PPL Scheme administered by Services Australia provides eligible employees who are the primary carers of children born or adopted on or after 1 July 2020 with up to 18 weeks of parental leave pay at the National Minimum Wage as two separate types of Parental Leave Pay:
- a. A Paid Parental Leave (PPL) period of up to 12 weeks, which is paid as a single continuous block. This needs to be used before the employee has returned to work from leave and within 12 months of the birth or adoption of their child.
  - b. Up to 30 Flexible PPL days. These need to be used after the Paid Parental Leave period and within 24 months of the birth or adoption of their child. Flexible PPL days can be used both before and after the employee has returned to work.
70. Employees, who are eligible for PPL, can choose how and when they want to access their Flexible PPL days. They can connect none, some or all of their Flexible PPL days to their 12 week PPL period. This will give them a continuous block of up to 18 weeks.
71. PPL pay is not a leave entitlement, but a payment made to an eligible employee while that employee is on leave.
72. The employee may be on any form of paid or unpaid leave, including maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* while in receipt of payments under the PPL Scheme. If the employee is on paid leave, parental leave pay will be paid in addition to the employee's normal pay. Applications for paid and unpaid leave for the period of parental leave pay should be made in the normal way applying to the particular leave type.
73. Flexible PPL days can only be paid on days that the employee is not working (e.g. an employee who has returned to work part-time Monday to Thursday can claim Flexible Paid Parental Leave on Fridays).

### Applications

74. Applications for the PPL Scheme must be submitted to Services Australia. Employees can apply for the PPL Scheme:
- a. through [myGov](#);
  - b. at any [Services Australia Centre](#) across Australia; or
  - c. by contacting Services Australia on 13 61 50.
75. Upon receiving an application, Services Australia will assess eligibility against a number of criteria including Australian residency status, relationship status, relationship to the newborn or recently adopted child, a PPL work test, and the employee's individual adjusted taxable income received in the previous financial year. Services Australia advises the Department when an employee is eligible for the PPL Scheme.
76. Applications for the PPL Scheme can be submitted to Services Australia by the primary carer up to three months in advance of the child's expected date of birth or adoption.

Employees are encouraged to apply to Services Australia at their earliest convenience to ensure that payments can be processed from the nominated date after the child's birth or adoption.

## Payment of parental leave pay

77. Parental leave pay is paid for a maximum of 18 weeks.
78. For the 12 week paid parental leave block and any of the Flexible PPL days connected to the block, employees are paid PPL through the usual pay process administered by the Department.
79. All other Flexible PPL days are paid by Services Australia.
80. Parental leave pay is subject to tax and does not count as salary for superannuation purposes.
81. If an employee returns to work or ceases employment during the 12 week payment block, PPL will cease from that date. However, employees can still access the 30 Flexible PPL days after their return to work. In some cases, the unused period of parental leave pay may be transferred to another carer who meets the eligibility criteria. Employees who decide to return to work before the end of the 12 week period must notify the Department and Services Australia as soon as possible to avoid any overpayments. Any overpayment is a debt owed by the employee to the Commonwealth and will be recovered in accordance with clause 28 of the Enterprise Agreement.

## 'Keeping in touch' days

82. The *Fair Work Act 2009* and the PPL Scheme include 'keeping in touch' provisions, which allow an employee a total of 10 'keeping in touch' days during unpaid parental leave and PPL.
83. These provisions allow an employee to undertake paid work on a day, provided:
  - (a) the purpose of performing the work is to enable the person to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave (activities such as training days, planning days and conferences would meet this requirement – a keeping in touch day is not intended to enable an employee to perform their normal duties); and
  - (b) both the person and the employer consent to the person performing work for the employer on that day; and
  - (c) the day is not within 14 days after the child was born.
84. Work undertaken under these provisions will not be considered a return to work for the purposes of the PPL Scheme.
85. Where an employee exceeds the 10 day limit, the employee is considered to have broken the continuity of their period of unpaid leave or returned to work and parental leave pay will cease from that date. However, where an employee, with the agreement of their employer, commences another period of unpaid parental leave immediately after the initial 12 months' leave, the employee may have a second allocation of 10 'keeping in touch' days.

86. An employee will be paid their usual salary in addition to any payments under the PPL Scheme (if applicable) for the hours worked on a 'keeping in touch' day. To enable payment, the employing Member, or an authorised person of the employing Member, must notify the Department via the Staff Help Desk by email: [mpshelp@finance.gov.au](mailto:mpshelp@finance.gov.au).
87. Hours of work on a 'keeping in touch' day are treated as hours of duty and are counted towards the accrual of leave entitlements, including annual leave and personal leave. Employer superannuation payments and, in some cases, employee superannuation payments will also be payable. As a 'keeping in touch' day is work, it will break the period of approved paid or unpaid leave in which it occurs but does not break the continuity of a period of unpaid leave for the purposes of the *Fair Work Act 2009*.

#### Examples:

88. Example 1: Wendy has a due date of 1 September. Wendy applies for 16 weeks of paid maternity leave commencing six weeks before the expected birth followed by 18 weeks of unpaid maternity leave.
89. Wendy applies to Services Australia to access the PPL scheme and receive parental leave pay for the 18 week period of her unpaid maternity leave. This provides Wendy with 16 weeks of paid maternity leave under the Enterprise Agreement at her usual salary and then 18 weeks of parental leave pay at the National Minimum Wage.
90. Example 2: Anna has a due date of 1 July. Anna applies for 32 weeks of paid maternity leave at half pay commencing two weeks before the expected date of birth. Anna also applies to take 12 weeks of annual leave at half pay.
91. Anna applies to Services Australia to access the PPL scheme and receive parental leave pay for 18 weeks from the commencement of her paid maternity leave. Anna is paid half her usual salary plus PPL at the National Minimum Wage for the first 18 weeks of her paid maternity leave. She is then paid half her usual salary for the remaining 14 weeks of her paid maternity leave and a further 12 weeks at half pay for her annual leave.

## Dad and Partner Pay

### ► [Services Australia – Dad and Partner Pay](#)

92. DAPP is administered by Services Australia and provides eligible employees who are the father or partner caring for a child born or adopted from 1 January 2013 with up to two weeks of parental leave pay at the National Minimum Wage.
93. DAPP is not a leave entitlement, but a payment made by Services Australia to an employee assessed as being eligible while that employee is on unpaid leave.
94. DAPP can be taken any time in the first year after birth or adoption.
95. The employee must not be on any form of paid leave and must not work while in receipt of DAPP. Applications for unpaid leave, such as unpaid parental leave or leave without pay, should be made to cover the DAPP period.

## Applications

96. Applications for DAPP must be submitted to Services Australia. Employees can apply for DAPP:
- a. through [myGov](#);
  - b. at any [Services Australia Centre](#) across Australia; or
  - c. by contacting Services Australia on 13 61 50.
97. Upon receiving an application, Services Australia will assess eligibility against a number of criteria including Australian residency status, relationship to the newborn or recently adopted child, a work test, and the employee's individual adjusted taxable income received in the previous financial year.
98. Applications for DAPP can be submitted to Services Australia by the applicant only and up to three months in advance of the child's expected date of birth or adoption. Employees are encouraged to apply to Services Australia at their earliest convenience to ensure that payments can be processed from the nominated date after the child's birth or adoption.

## Payment of DAPP

99. Employees are paid DAPP directly by Services Australia as a one-off payment. DAPP is taxable income and does not count as salary for superannuation purposes.
100. DAPP is paid for a maximum of two weeks. DAPP ceases on the child's first birthday or one year from the date of adoption. In order to receive the full two weeks payment, the DAPP start date, and therefore the commencement date of unpaid leave, needs to be within 50 weeks of the child's birth or adoption.
101. If an employee returns to work or ceases employment during the two week DAPP period (in which the employee must be on unpaid leave), the DAPP one-off payment may be required to be amended by Services Australia. Employees who return to work or cease employment before the end of the two week DAPP period must notify Services Australia as soon as possible.

## Adoption leave

- Enterprise Agreement clause 47

102. Paid adoption leave is available to eligible employees in accordance with clause 47 of the Enterprise Agreement.
103. To be eligible to receive paid adoption leave, an employee must have at least 12 months continuous eligible Commonwealth service. Note that service during which the employee was not entitled to personal leave is not eligible service for this purpose (e.g. periods during which a loading in lieu of leave was paid).

104. There is no entitlement to unpaid adoption leave under the Enterprise Agreement. An employee may access the unpaid parental leave provisions of the Fair Work Act 2009 or apply for leave without pay. An employee may also apply to use annual or long service leave, if available. Other paid leave may not be used to substitute for the paid adoption leave or to extend the period of 16 weeks of paid adoption leave.
105. The Enterprise Agreement allows adoption leave to be taken on a half pay basis as an administrative arrangement. Where the leave is taken on half pay, only the first half of the leave will count as service, the second half of the leave is treated as leave without pay and will not count as service.
106. Applications for adoption leave should be submitted to the Department as soon as possible prior to the adoption or intended adoption, and must be accompanied by sufficient evidence to satisfy the Department that an adoption has occurred or will occur, and to satisfy the provisions of the leave, such as the age of the child. Employees will be eligible for adoption leave before the formal adoption is finalised taking into account the practical arrangements of the adoption process. For example, where an employee participates in a transition period before the formal adoption, adoption leave will be available during the transition period.
107. An employee who will be the primary carer of a child born through a lawful surrogacy arrangement is entitled to paid adoption leave if the employee has obtained a Parentage Order from the Supreme Court of the State or Territory in which the birth occurred. The leave may commence from the date the Parentage Order is made.
108. A child born through a surrogacy arrangement will not be considered a child of the employee where the employee was required to donate genetic material for the pregnancy for the purposes of clause 47.2(c). This is an exception to clause 47.2 which states that for an employee to be eligible to receive paid adoption leave, the adopted child must not be a child of the employee or the employee's spouse, de facto partner or a child of an immediate family member. All other requirements of clause 47.2 must be met for an employee to be entitled to paid adoption leave.
109. Surrogacy arrangements are regulated by the States and Territories. All States and Territories, other than the Northern Territory, have legislation that regulates surrogacy arrangements. Employees are encouraged to seek their own legal advice if they intend to pursue surrogacy either as a surrogate or intended parent.

## Supporting partner leave

- ▶ Enterprise Agreement clause 48

110. For the purpose of supporting partner leave for adoption, the adopted child must meet the requirements set out at clause 47.2 of the Enterprise Agreement.
111. In the circumstance that the partner of an employee gives birth to more than one child or adopts more than one child at a point in time, the employee is only entitled to five weeks of supporting partner leave.

112. Supporting partner leave can be accessed on a periodic basis (e.g. one business day for 25 weeks).
113. Supporting partner leave can be taken at full pay or half pay (up to a total of 10 weeks at half pay), or a combination.
114. Applications for supporting partner leave must be accompanied by sufficient evidence to satisfy the Department that a birth or adoption will occur or has occurred.

### **Leave following a miscarriage, stillbirth or post-partum death of a child**

115. An employee whose pregnancy ends earlier than 20 weeks before the expected date of the birth of their child (i.e. before 20 weeks' gestation) is entitled to:
  - a. unpaid special maternity leave in accordance with section 80 of the *Fair Work Act 2009* (FW Act) where they have a pregnancy-related illness, or their pregnancy ends after at least 12 weeks' gestation otherwise than by the birth of a living child and their child is not stillborn;
  - b. for an employee, other than a casual employee, two days of paid compassionate leave;
  - c. for an employee other than a casual employee, paid personal leave under clause 38; and
  - d. leave without pay under clause 49.
116. An employee, other than a casual employee, is entitled to two days of paid compassionate leave where their partner experiences a miscarriage.
117. An employee, other than a casual employee, is entitled to:
  - a. paid and unpaid leave in accordance with the Maternity Leave (Commonwealth Employees) Act 1973;
  - b. the additional four weeks of paid maternity leave under clause 46; and
  - c. three days of paid compassionate leavewhere their pregnancy ends within 20 weeks of the expected date of birth of their child (i.e. after at least 20 weeks' gestation), or their child is stillborn or dies post-partum following their pregnancy.
118. An employee, other than a casual employee, is entitled to:
  - a. supporting partner leave under clause 48; and
  - b. three days of paid compassionate leavewhere their child is stillborn or dies post-partum following their partner's pregnancy.
119. A casual employee is entitled to two days' unpaid compassionate leave in accordance with the FW Act where they experience a miscarriage, their child is stillborn or dies post-partum.



120. An employee who is entitled to unpaid parental leave in accordance with the FW Act where their child is stillborn, or their child dies during the 24-month period starting on the child's date of birth.
121. Subsection 77A(2) of the FW Act defines a stillborn child as a child who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks, and who has not breathed since delivery, and whose heart has not beaten since delivery.

## Leave without pay

- ▶ Enterprise Agreement clause 49

122. An employing Member may approve leave without pay for reasons including, but not limited to:
- parental leave (as provided under the *Fair Work Act 2009*);
  - ceremonial leave; and
  - observance of religious holidays.
123. Leave without pay for ceremonial purposes may be granted to an employee of Aboriginal or Torres Strait Islander descent for ceremonial purposes connected with the death of a member of the immediate or extended family or for other ceremonial obligations under Aboriginal and Torres Strait Islander law.
124. In considering requests for leave without pay, an employing Member should take into account matters such as the reason for the request, the effect on the operations of the workplace, and the employee's length of service.
125. Leave without pay does not count as service for any purpose. However, leave without pay of any type (including the second half of a period of maternity leave at half pay), of 30 calendar days or less, in an accrual year does not affect the accrual of leave. Any unauthorised absence (an absence not covered by approved leave) of at least one day in an accrual year will affect the accrual of leave. Leave without pay may also affect eligibility for salary increments and retention payments in accordance with the Enterprise Agreement.
126. An application for leave without pay must state the reason for the leave.

## Leave for cultural and/or ceremonial purposes

127. 'Immediate family' under clause 67 of Enterprise Agreement includes traditional kinship, where there is a relationship or obligation, under the customs and traditions of the community or group to which the employee belongs.
128. Employees that have cultural and/or ceremonial duties when an immediate family member or household member contracts or develops a personal illness that poses a

serious threat to his or her life, or sustains a personal injury that poses a serious threat to his or her life, may access a combination of:

- a. two days of paid compassionate leave in accordance with clause 40
- b. one day of paid miscellaneous leave
- c. other paid leave in accordance with the Enterprise Agreement (e.g. annual leave, personal leave)
- d. leave without pay under clause 49

where the paid compassionate and miscellaneous leave available is cumulative up to three days.

129. Employees that have cultural and/or ceremonial duties following the death of an immediate family member, household member or friend may access a combination of:

- a. three days of paid compassionate leave in accordance with clause 40
- b. one day of paid miscellaneous leave to attend a funeral
- c. two days of paid miscellaneous leave to undertake other duties, including those relating to Sorry Business or kinship responsibilities
- d. other paid leave in accordance with the Enterprise Agreement (e.g. annual leave, personal leave)
- e. leave without pay under clause 49

where the paid compassionate and miscellaneous leave available is cumulative up to six days.

## Public holidays

- ▶ Enterprise Agreement clause 50
- ▶ [Dates of public holidays](#)

130. Employees who are temporarily working away from their work base observe any public holidays applicable to the temporary location and/or observe any public holidays at their work base which may occur during that period in accordance with clause 50.1 of the Enterprise Agreement.

131. No payment is made for public holidays occurring during leave without pay. However, employees will be paid for a public holiday where a period of leave without pay ceases prior to a public holiday (or consecutive public holidays) or where a period of leave without pay commences immediately after a public holiday. For the purposes of this paragraph, the public holidays from Christmas Day to New Year's Day inclusive are regarded as consecutive.

132. Public holidays during annual, personal or supporting partner leave are not deducted from leave credits.

133. Where an employee is absent on both the day before and the day after a public holiday, the public holiday is paid at the same rate as that of the leave. Where different rates of pay apply before and after the public holiday, the public holiday is paid at the higher rate (e.g. if absent on annual leave at half pay on the day before a public holiday and on leave without pay the day after the public holiday, then the public holiday is paid at half pay).
134. Casual employees are paid for the hours recorded on their casual employment agreement for a day that is a public holiday or annual closedown day. Casual employees are not paid for a day that is a public holiday or annual closedown day if that day is not recorded on their casual employment agreement.
135. Ongoing and non-ongoing employees can now substitute a gazetted public holiday for an alternative day off with the agreement of their Parliamentarian/Authorised Officer: refer **Attachment B: Substitution of Public Holidays**.

## Annual close down

- ▶ Enterprise Agreement clauses 50.2 and 50.3

136. An annual closedown on the business days that fall between Christmas Day and New Year's Day is available to eligible employees in accordance with clause 50.2 of the Enterprise Agreement.
137. Where an employee accesses paid time off for ordinary hours worked during the annual closedown in accordance with clause 50.3 of the Enterprise Agreement, the paid time off is taken at full pay and cannot equal more hours than the ordinary hours worked during the annual closedown. Employees are not required to submit a leave application in relation to this paid time off.
-

## Attachment A – Family and domestic violence policy

### Purpose

1. This Policy provides a framework for the Department, employing Members and colleagues to support employees who experience family and domestic violence. Employees who are experiencing, or who are at risk of experiencing, family and domestic violence are encouraged to seek support from the workplace. A sensitive and holistic approach to supporting employees allows them to continue to participate in the workplace during a difficult time.
2. This Policy also acts as a guide for managers and colleagues in supporting employees whose work life is affected by family and domestic violence. It outlines support available within and outside the workplace for employees, their managers, and their colleagues.

### Introduction

3. Family and domestic violence includes ‘violent, threatening or other abusive behavior, which seeks to coerce or control the employee and causes them harm or fear’. Statistically, family and domestic violence is most likely to be committed against women.
4. Family and domestic violence can include, but is not limited to:
  - physical violence
  - sexual assault or other sexually abusive behaviour
  - emotional or psychological abuse
  - verbal abuse
  - spiritual or cultural abuse
  - economic or financial abuse.
5. Family and domestic violence includes ‘by an employee’s close relative, a current or former intimate partner, or a member of their household. A close relative is:
  - an employee's
    - spouse or former spouse
    - de facto partner or former de facto partner
    - child
    - parent
    - grandparent
    - grandchild
    - sibling

- a child, parent, grandparent, grandchild or sibling of an employee's current or former spouse or de facto partner, or
  - a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
6. Employees may sometimes experience situations of violence or abuse in their personal life which may affect their attendance or performance at work.
  7. It is important to recognise the potentially devastating impact that family and domestic violence can have on the lives of those who experience it, including their capacity to work and their financial security. The Department, employing Members and colleagues are committed to supporting employees who experience family and domestic violence and providing a workplace environment that is supportive and promotes flexibility in times of need.

## Immediate danger

8. **If you are feeling unsafe in the workplace right now, call 000.**

## Confidentiality

9. Information about a family and domestic violence situation should be handled similarly to other personnel and health information. Requirements to protect an employee's privacy with regard to family and domestic violence are enshrined in the *Fair Work Act 2009*.
10. Employing members, managers and colleagues must maintain appropriate confidentiality in regard to the personal information of employees. Discussions with the employing Member, managers or the Department will be on a strictly need-to-know basis.
11. Discussion should not include personal information without obtaining prior consent from the employee. However, the Australian Privacy Principles permit the use and disclosure of personal information in certain circumstances including lessening or preventing a serious threat to life, health or safety, or taking appropriate action in relation to suspected unlawful activity or serious misconduct.
12. The Fair Work Regulations also require that pay-slips do not record any indication that leave was taken for the purpose of family and domestic violence.

## Roles and responsibilities

### Employees

13. Employees who wish to access any of the support available within the workplace can contact any of the following people:
  - their employing Member; or
  - their Chief of Staff or manager; or

- The [Parliamentary Workplace Support Service \(PWSS\)](#)
  - The [Employee Assistance Program](#)
  - a trusted colleague,
  - the Department.
14. Employees can also seek assistance from an external service. A list of services, including 24 hour support services, and their contact details can be found at the end of this Policy.
15. Employees experiencing family and domestic violence may choose to disclose their situation to a trusted colleague. Where such information is disclosed, the colleague should provide support to the employee by:
- listening without judgement and respecting their decisions
  - maintaining appropriate confidentiality
  - encouraging them to seek help from a family and domestic violence support organisation
  - referring them to this Policy, the Employee Assistance Program, or any of the external support services listed at the end of this Policy.
16. Where the colleague is concerned about the employee's health and safety, they should speak to the Assistant Secretary, HR Frameworks Branch, Ministerial and Parliamentary Services on (02) 6215 1499.
17. Employees who have had information disclosed to them are encouraged to seek support for themselves within or outside the workplace, including through the Employee Assistance Program or an external support service.

## Employing Members and managers

18. Employing Members and managers are responsible for ensuring employees are aware of this Policy, and providing support, consistent with this Policy, to employees affected by family and domestic violence. They may also be required to coordinate support with the Department for an employee experiencing family and domestic violence.
19. Where an employing Member or manager is concerned about the wellbeing of an employee, they should discuss their concerns with the employee, encouraging them to use the assistance available if needed, and/or consult with the Department.
20. Where family and domestic violence raises work health and safety concerns, employing Members and managers should discuss these with the Assistant Secretary, HR Frameworks Branch, Ministerial and Parliamentary Services on (02) 6215 1499.
21. Employing Members and managers should facilitate support for an employee to the fullest extent possible in the workplace.
22. If a manager needs support as a result of an employee disclosing family and domestic violence to them, they can also contact the Employee Assistance Provider or one of the external support services listed below.

## The Department

23. The Department is responsible for providing advice to employing Members, managers, colleagues and employees about this Policy.
24. The Department will assist to coordinate workplace support for employees affected by family and domestic violence. This may include:
  - developing a safety plan with the employee
  - advising and liaising with the employee's employing Member and/or manager.

## Support

25. Employees experiencing family and domestic violence may require a range of support. This may include:
  - a. Access to leave entitlements in accordance with the Enterprise Agreement;
  - b. Flexible working arrangements.
  - c. Contact with police on the employee's behalf, where appropriate;
  - d. Flexibility in performance management—family and domestic violence should be acknowledged as a potential mitigating factor if performance has been affected. Employing Members and managers should:
    - continue to have regular, sensitive conversations with the employee about the job requirements, performance expectations, and development opportunities of that performance cycle;
    - with assistance from the Department, offer to develop workload strategies for work to be managed and performance assessed having regard to the employee's circumstances;
  - e. Referral to external support through the Employee Assistance Program;
  - f. Any other measures or changes to normal arrangements that are considered appropriate

## Leave

26. Leave is provided in accordance with the Enterprise Agreement and National Employment Standards (NES).
27. The Enterprise Agreement contains leave entitlements designed to provide maximum support that is appropriate to individual circumstances in order to assist employees and allow them flexibility to deal with personal crises, such as being affected by family and domestic violence.
28. A flexible and supportive approach should be taken to management of leave for employees affected by, or at risk of experiencing, family and domestic violence.

## Paid Miscellaneous Leave

29. Employees who are affected by, or at risk of experiencing, family and domestic violence may be granted paid miscellaneous leave in accordance with clause 42 and clause 44 of the Enterprise Agreement and the NES.
30. Ongoing and non-ongoing employees have access to 'miscellaneous leave –other' under the Enterprise Agreement. This may exceed the NES provision of 10 days leave, if required.
31. Casual employees are entitled to the NES provision only, which allows for up to ten days leave per year (anniversary of commencement). This is not accruable.
32. Reasons may include:
  - making arrangements for their safety, or the safety of a close relative (including relocation)
  - Moving into emergency accommodation and seeking more permanent safe housing;
  - Attending dispute resolution or court proceedings;
  - Attending police appointments;
  - Accessing legal, financial or medical advice;
  - Attending counselling;
  - Organising alternative care or educational arrangements for their children;
  - Reasonable recovery periods;
  - Any other circumstances associated with family and domestic violence.
33. An employee may also take paid miscellaneous leave to make arrangements for the safety of a close relative (including relocation)
34. Leave applications can simply be stated as being for 'Miscellaneous leave—Other'.
35. An employee does not have to use their paid personal leave before they apply for paid miscellaneous leave where paid miscellaneous leave is the most appropriate leave type available for the employee's circumstances.

## Paid Personal Leave

36. Paid personal leave (for ongoing and non-ongoing employees only) in accordance with clause 38 of the Enterprise Agreement may also be used:
  - for personal illness or injury of the employee resulting from family and domestic violence;
  - to provide care or support to a family/household member for personal illness or injury resulting from family and domestic violence;
  - to provide care or support to a family/household member who is affected by an unexpected emergency resulting from family and domestic violence.
37. There may be related circumstances where it would ordinarily be appropriate for an employee to use paid personal leave (e.g. to attend medical or counselling appointments).
38. Leave applications can simply be stated as being for 'Personal illness or injury', 'Carer's leave (illness/injury)' or 'Carer's leave (emergency)' as appropriate.



## Approving and recording absences

39. Paid miscellaneous leave may be approved by:

- the employing Member or authorised person; or
- the Assistant Secretary, HR Frameworks Branch, Ministerial and Parliamentary Services in circumstances where:
  - it would not be appropriate for the employee to obtain approval for the leave from the employing Member or authorised officer; or
  - the employee has been unable to obtain approval for the leave from the employing Member or authorised officer.

40. Evidence of family and domestic violence may be required to apply for paid miscellaneous leave. Evidence may be in the form of a document which attests to the existence of a family and domestic violence circumstance applying to the employee issued by a health professional or counsellor, a professional from a family and domestic violence or related support service, a Court, the Police, or legal practitioner, or may be in the form of a statutory declaration. *Once sighted by the leave approver, evidence will not be kept on an employee's personnel record.*

41. The recording of absences (only identified as 'miscellaneous leave – other') will ensure the privacy of the employee is maintained while no identifying information will not be included on the payslip.

42. For paid personal leave (for ongoing and non-ongoing employees), the employing Member or authorised person can approve the leave. Consistent with the use of such leave, the evidence requirements remain at the discretion of the employing Member.

43. All records held by the Department are to be kept securely and confidentially according to the Department's Privacy Policy.

## Casual employees

44. For casual employees, leave in accordance with the NES provisions can be processed through their parliamentarian or authorised officer advising the MaPS Helpdesk.

45. If an employee does not feel comfortable discussing these arrangements their parliamentarian, authorised officer, or Finance they can contact the Parliamentary Workplace Support Service (PWSS) for assistance on 1800 747 977.

## Pay-slips

46. Pay slips will not identify that leave was taken because of family and domestic violence.

47. This leave must be shown on a pay slip as ordinary hours of work, or another kind of payment for performing work such as an allowance, bonus or overtime payment. It is best practice to show this time on the pay slip in a way that makes it appear that the employee has not taken leave.

48. However, the pay slip may record the time as another type of leave (for example, annual leave) at the employee's request.

## Other leave options

49. An ongoing or non-ongoing employee's access to paid miscellaneous leave and paid personal leave for reasons of family and domestic violence does not prevent them from also choosing to access any other leave type to which they are entitled in accordance with the Enterprise Agreement.
50. An ongoing or non-ongoing employee can use paid family and domestic violence leave during a period of paid personal/carer's or annual leave which will be re-credited.

## Flexible working arrangements

51. Under the National Employment Standards, an employee experiencing violence from a member of the employee's family has a right to request flexible working arrangements. These requests can only be refused on reasonable business grounds. Such requests could include:
- changes of hours, or patterns of hours, to allow the employee to meet family commitments;
  - changes to work location;
  - changes to employment duties where this is able to be identified (e.g. moving to a non-public facing role).
52. Flexible working arrangements are subject to any existing approval requirements.
53. The Department is able to provide confidential guidance and support to an employee in relation to possible flexible working arrangements, where their existing working arrangements are not appropriate.

## Perpetrators of Family and Domestic Violence

54. The workplace may include not only employees who are victims of, or affected by, family and domestic violence, but also perpetrators—and this must also be handled appropriately and sensitively.
55. Various policies, including the Safe and Respectful Workplaces Policy, the Sexual Harassment Policy, and the [Statement of Standards for Ministerial Staff](#), set out expectations for MOP(S) Act employees when acting in connection with their employment. Any employee who:
- threatens, harasses or abuses a partner, ex-partner, family or household member at, or from, work; or
  - uses workplace resources such as phones or email to threaten, harass or abuse a family or household member
- may be investigated in accordance with the relevant policy.
56. An employee suspected of perpetrating violence will also be referred to the relevant support services, including the Employee Assistance Program.

57. Family and domestic violence is a criminal offence and is subject to the relevant state or territory laws. The police should be notified of any incidents of family and domestic violence in the workplace.

## Further assistance

58. If you or someone you know is experiencing family and domestic violence, or you simply want to find out more, the following external services are available to provide information and assistance:

- [1800Respect](#) – National sexual assault, domestic family violence counselling service: 1800 737 732
- [Employee Assistance Program](#)
- [Lifeline](#): 13 11 14—24-hour crisis support and referral
- [Relationships Australia](#): 1300 364 277
- [Mensline](#): 1300 789 978
- [EveryMan](#): 6230 6999
- [Services Australia Family and Domestic Violence Services](#)
- [Department of Social Services – Family Safety Pack](#)
- [Domestic Violence Crisis Centre](#)
- [Australian Institute of Health and Welfare](#)
- [Safesteps](#)
- [Australian Indigenous Health Infonet – Family safety](#)
- [Another Closet – Domestic and Family Violence in LGBTIQ Relationships](#)
- [BeyondBlue](#)
- [White Ribbon](#)
- [Financial Counselling Australia](#)

## References

- [New paid family and domestic violence leave - Fair Work Ombudsman](#)
  - [National Employment Standards - Fair Work Ombudsman](#)
-

## Attachment B – Substitution of Public Holidays

1. Special Minister of State [Direction 2023-03](#) brings public holiday substitution for MoP(S) Act employees in line with the broader Australian Public Service.
2. Ongoing and non-ongoing employees can substitute a gazetted public holiday for an alternative day off with the agreement of their Parliamentarian/Authorised Officer.
3. The intent of this provision is to provide flexibility and allow employees of different faiths and beliefs to be able to acknowledge days of observance consistent with their religious or cultural beliefs, however the arrangement is not limited to acknowledgement of solely religious or cultural observance.
4. Employees may apply to substitute a public holiday for another day by seeking approval from their Parliamentarian/Authorised Officer indicating which public holiday is to be substituted, the reason for the substitution (optional) and nomination of an alternative day to be taken off.
5. Applications are made via this [notification](#) which is forwarded to [MOPSPayandConditions@finance.gov.au](mailto:MOPSPayandConditions@finance.gov.au) for processing. **A copy of this form will be submitted to the Parliamentarian/Authorised Officer for their formal approval.**
6. Compensation for staff who are directed to work on public holidays is provided by way of Personal Staff Allowance or Electorate Staff Allowance, under the terms of the [MOPS Enterprise Agreement 2020-23.pdf \(finance.gov.au\)](#).

### Example

#### Easter

Frank has accepted Buddhist vows and while he still acknowledges Christian days of faith with his friends, he would prefer to undertake Buddhist retreats at a more appropriate time. He therefore applies to substitute Easter Friday and Monday to undertake a short Buddhist retreat in the Blue Mountains in July.

He applies to substitute the two days, indicating which two days in July he will be taking in lieu for the retreat.

The office is adequately staffed for the proposed July dates and the office has a significant range of work which can be undertaken on the substituted public holidays. The parliamentarian/authorised officer agrees with the request and the application form is submitted. While a reason for the substitution may include advice by the employee regarding their 'faith or beliefs', this is optional.

### Australia Day example

Tony and his family are First Nations people. Tony also wishes to spend time with his family and wants to go on a holiday with his family in August and asks to substitute the Australian Day public holiday. His Parliamentarian agrees as they also require Tony to prepare and review a high number of briefs and new legislation for the first sitting weeks of Parliament in February.

The substituted day is approved.

### Canberra Day

Minh is planning to visit friends in Sydney in May and asks to substitute the Canberra Day public holiday. Unfortunately, the proposed substituted day falls in the middle of Senate Estimates and Minh plays an important role in managing background briefings. The substituted day is not able to be approved. However, following a conversation, an alternative day is approved which suits all parties.

## Frequently Asked Questions

Q1. Can an application to substitute a public holiday for another day be refused?

A. Yes. An application to substitute a public holiday for another day is subject to the same considerations as any proposed leave application.

An application may be refused where the alternative day is not suitable for the work arrangements of the office at the time proposed.

Direction 2023/03 allows for the substitution of a public holiday 'where the parliamentarian ... and employee agree ...' for a day to be substituted.

A Parliamentarian/Authorised Officer will need to consider the overall operational requirements of the office for the day proposed, taking account of Parliamentary sitting weeks, work priorities, prior leave approvals and staffing availability for the proposed substitute day and other relevant factors. Consideration should be given as to whether sufficient work is required to be undertaken on the day that would otherwise be a public holiday.

While observance of a public holiday allows employees to acknowledge specific days of faith or belief and acknowledgement of significant days important to them, it also allows for an employee to take a deserved break from work and provide a work/life balance.

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Q2. Can I apply to substitute more than one public holiday during the year?

A. Yes. Please discuss with your Parliamentarian/Authorised Officer as you would for any other leave arrangement and taking account of the above considerations.

Requests to substitute a public holiday should be limited to a single application per public holiday (see below) and applications should not be made which would result in the accumulation of substitute days (see below). Other notification and timeframe limitations apply (see below).

Please apply using the [notification](#) form.

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Q3. Can I apply to substitute a number of public holidays on the one application?

A. No. Apart from Easter, an application should only seek to substitute a single public holiday for another day. An exception is made for Easter because the Easter observance runs from Good Friday to Easter Monday. A substitution can be made for the gazetted public holidays of Good Friday and Easter Monday, noting the Saturday is included in the weekend.

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Q4. Can I substitute a day to connect with other leave I am taking?

A. Yes, subject to the usual leave and working arrangement discussions you would have with your Parliamentarian/Authorised Officer.

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Q5. Can I substitute Christmas and New Year public holidays

A. No. This is a close down period and offices are not accessible. It is therefore not possible to substitute the Christmas and New Year public holidays for another day.

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Q6. When should I apply to substitute a particular public holiday?

A. To allow for practical management of work and staff availability, an application should be made within a month before the public holiday. Otherwise the forecasting of operational matters becomes more difficult to manage. However, this is not a hard rule and all applications should be discussed with your Parliamentarian/Authorised Officer.

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Q7. I just want to use the public holiday and substitute it for another time as I have little leave available. Can I do this?

A. Yes, subject to the work requirements and staff availability for the substitute dates and the work to be undertaken on the public holiday. While acknowledgement of an employee's religious and other beliefs is a major reason for substituting public holidays, the provision allows for flexibility.

Substitution of a public holiday must include nomination of a specific alternative day.

The substitution of public holidays should be made on a case by case basis and cannot be used to accumulate a de-facto leave credit.

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Q8. Can I 'bank' a number of public holidays, pending future advice regarding a substitute day?

A. No. The provision allows employees to substitute a gazetted public holiday for an alternative day off with the agreement of their Parliamentarian/Authorised Officer. A nominated

substitute/alternative day off is required.

Consideration should also be given as to the work available to be undertaken on the substituted public holiday. If public holidays were banked it is difficult to forecast the availability of work in advance.

The provision to substitute a public holiday is not intended to 'bulk up' recreation leave balances.

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Q9. Is this a TOIL arrangement?

A. No. Substitution of a public holiday under Determination 2023/03 is not a time off in lieu (TOIL) arrangement for additional hours worked.

Compensation for staff who are directed to work on public holidays is provided by way of Personal Staff Allowance (PSA) or Electorate Staff Allowance (ESA), under the terms of the [MOPS Enterprise Agreement 2020-23.pdf \(finance.gov.au\)](#).

For staff who are *not* in receipt of PSA or ESA, TOIL arrangements are available under clause 34 of the EA. Please see [Additional Hours Guideline](#) for more information.

The basis for the substitution of a public holiday arose from acknowledging an employee's religious and other beliefs, although the provision does not specify this and allows for flexibility.

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Q10. Can I nominate an alternative day in the following calendar year?

A. Where possible, for reasons of practical management of this provision, the alternative day should be within 12 months of the public holiday being substituted.

It is preferred that the substituted day be taken much earlier to ensure effective management of employee availability, work and other staff arrangements.

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Q11. Do I have to 'declare' my faith or belief to justify seeking approval to substitute the public holiday for another day?

A. No, this is not required. Direction 2023/03 does not require any such declaration.

While acknowledgement of an employee's religious and other beliefs is a major reason for substituting public holidays, the provision does not specify this and allows for flexibility generally. However where an employee advises that this is the reason for seeking to substitute a public holiday, this is a significant consideration to be taken into account by the Parliamentarian.

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Q12. What happens if a number of employees want to work on the same public holiday and substitute it for another day?

A. This is subject to the operational requirements of the office, based on the public holiday

being worked and the specific alternative days to be approved.

Where an employee specifies reasons for substituting the public holiday based on their faith or beliefs, these should be acknowledged and considered appropriately.

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Q13. Can I apply to substitute a part day of a public holiday?

A. No. Applications can only be made to substitute the full day.

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Q14. I work part-time hours which vary for each day I work. How do I substitute a day?

A. The hours scheduled to be worked on the substituted public holiday must be the same as the hours which would have applied to the day now being taken as leave.

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Q15. How do I need to demonstrate that I actually worked on the public holiday?

A. Each office will have its own accountability arrangements, and employees must comply with those.

If the Public Holiday is not worked, then the application for the proposed alternative day off must be cancelled.

If the nominated public holiday is not worked and the substitute day is still taken off this would need to be flagged with the respective Parliamentarian, and appropriate leave arrangements made.

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Q16. What if something happens and I am unable to work the public holiday?

A. Advise [MOPSPayConditions@finance.gov.au](mailto:MOPSPayConditions@finance.gov.au) who will note your record and cancel the substitute date.

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Q17. Can I apply to substitute a public holiday after that public holiday has happened (for example, can I apply in February or March to substitute the previous Australia Day public holiday that I worked)?

A. No. This is not consistent with the overall intention of the provision. (Also refer to Q9.)

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Q18. If I am unable to take the substituted day can I 'cash out' the day?

A. No

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