

# Cultural and Ceremonial Leave

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## Authority and Application

Clause 60 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 60 of the Agreement sets out the conditions under which Employees of Aboriginal or Torres Strait Islander descent may apply for Cultural and Ceremonial leave.

In accordance with clause 60, Employees of Aboriginal or Torres Strait Islander descent may, subject to the approval of the Employer:

- access one day of paid leave per calendar year to participate in NAIDOC week activities (see clause 60.1);
- attend Aboriginal and/or Torres Strait Islander community meetings (except annual general meetings) (see clause 60.2);

- use accrued leave to attend Annual General Meetings of Aboriginal community organisations at which the election of officer bearers will occur (see clause 60.3); and
- be granted up to three days paid Ceremonial Leave in each year of employment (see clause 60.4).

NAIDOC week leave and paid Ceremonial leave does not accrue from year to year and is not paid out on termination of an Employee's employment.

## Relevant provisions of the VPS Agreement

### Clause 60. Cultural and Ceremonial Leave

## Supplementary Guidance Information

### 1. Cultural and Ceremonial Leave

1.1. The Ceremonial Leave entitlements set out in clause 60.4 of the Agreement have been amended to provide Employees of Aboriginal or Torres Strait Islander descent leave for ceremonial purposes in the circumstances outlined in the above overview when requested, assuming the notice and evidence requirements have been met. The discretionary nature of this entitlement in previous iterations of the Agreement no longer applies.

### 2. Notice and Evidence Requirements

2.1. Where the Ceremonial Leave to be taken is related to the death of a member of the immediate family or extended family, Employees may be required to provide satisfactory evidence to support their entitlement to be absent on ceremonial leave.

2.2. For guidance of what constitutes satisfactory evidence in the event of death, Employers and Employees should refer to clause 54.4 of the Agreement – Compassionate Leave, notice and evidence requirements. Where the Employee does not provide satisfactory evidence as requested by the Employer the absence will be without pay unless otherwise approved by the Employer.

2.3. In circumstances where it is not reasonably practicable to first discuss the taking of Ceremonial Leave with their Employer prior to the leave being taken, the Employee must advise of their absence from work and submit their leave application as soon as practicable upon their return to work, together with the required documentation supporting the absence.

2.4. When considering applications for Cultural or Ceremonial Leave, Employers must also take into account the following factors where relevant:

- Nature of the association between the Employee and the deceased / cultural event, noting that the Employer may wish to seek support from their Aboriginal and Torres Strait Island employment area to ensure this assessment is culturally sensitive.
- Whether the Employee has to take significant responsibility for any arrangements associated with the ceremonies.
- The amount of time required to discharge any responsibilities or obligations.
- Adequate travelling time required to discharge responsibilities or obligations.

### 3. Use of Compassionate leave and Other leave for cultural or ceremonial reasons.

3.1. Ceremonial Leave granted under this clause is in addition to any entitlement to Compassionate Leave (clause 54).

- 3.2. Employers may grant further leave for cultural purposes, with or without pay under clause 70 (Other Leave), where reasonable in the circumstances and at the discretion of the Employer.
- 3.3. Employees may be required to accompany their leave applications for Other Leave or Compassionate Leave taken for cultural or ceremonial reasons with satisfactory evidence per the notice and evidence requirements outlined above.

#### **4. Substitution of leave categories**

- 4.1. Where an Employee is on a period of paid Annual or Long Service Leave and an entitlement to Cultural and Ceremonial Leave (clause 60) arises, the Employee may request that they be granted Cultural and Ceremonial Leave, Other leave or Compassionate Leave and if approved, the Employee will be re-credited their annual or long service leave.
- 4.2. An application to substitute leave must include documentary evidence as outlined in section 2 above.
- 4.3. Where the Employee has already received the annual leave allowance payable under clause 45 of the Agreement for the period of annual leave to be re-credited, the recovery of the overpayment will be managed in accordance with clause 33.5 of the Agreement.

#### **5. Meaning of terms used in clause 60 of the Agreement**

- 5.1. Ceremonial obligations referred to in clause 60.4 may include funerals, reburials, memorials, reopening of tombs or burial places, coming of the light, smoking ceremonies and welcoming ceremonies.
- 5.2. For the purposes of this clause, the definition of 'immediate family' has the same meaning as clauses 2(h) and 2(i) of the Agreement. However, due to complex cultural kinship systems, the meaning of connection to 'immediate family' is extended to include the concept of the extended family (see clause 60.4(a)(i) of the Agreement). The Aboriginal and Torres Strait Islander Employee's 'extended family' may include an aunty, uncle, niece, nephew, cousin (including through traditional adoption) people of significant connections to the Employee.

#### **Making decisions under this policy**

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

#### **Dispute resolution**

An Employee who is directly affected by a decision made or action taken pursuant to clause 60 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

### **Further Information**

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

### **Related policies or documents**

## VPS Enterprise Agreement Common Policies

- Annual Leave
- Compassionate Leave
- Other Leave
- Personal/Cares Leave
- Review of Actions

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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