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## VPS Enterprise Agreement Common Policies

# CULTURAL AND CEREMONIAL LEAVE

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## Authority and Application

Clause 53 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 53 of the Agreement sets out the conditions under which Employees of Aboriginal or Torres Strait Islander descent may apply for cultural and ceremonial leave.

Under clause 53, Employees of Aboriginal or Torres Strait Islander descent may, subject to the approval of the Employer:

- access one day of paid leave per year to participate in NAIDOC week activities (see clause 53.1);
- attend Aboriginal community meetings (except annual general meetings) (see clause 53.2);
- use accrued leave to attend Annual General Meetings of Aboriginal community organisations at which the election of officer bearers will occur (see clause 53.3); and
- be granted up to three days paid ceremonial leave in each year of employment (see clause 53.4).

## Relevant provisions of the VPS Enterprise Agreement

### Clause 53. Cultural and Ceremonial Leave

#### 53.1 NAIDOC Week Leave

- (a) An Employee of Aboriginal or Torres Strait Islander descent is entitled to one day of paid leave per year to participate in National Aboriginal and Islander Day Observance Committee (NAIDOC) week activities and events.
- (b) NAIDOC week leave will not accrue from year to year and will not be paid out on termination of the employment of the Employee.

#### 53.2 Leave to attend Aboriginal community meetings

The Employer may approve attendance during working hours by an Employee of Aboriginal or Torres Strait Islander descent at any Aboriginal community meetings, except the Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

### **53.3 Leave to attend Annual General Meetings of Aboriginal community organisations**

The Employer may grant an Employee of Aboriginal or Torres Strait Islander descent accrued annual or other leave to attend Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

### **53.4 Ceremonial leave**

- (a) Ceremonial leave may be granted to an Employee of Aboriginal or Torres Strait Islander descent for ceremonial purposes:
  - (i) connected with the death of a member of the immediate family or extended family (provided that no Employee shall have an existing entitlement reduced as a result of this clause); or
  - (ii) for other ceremonial obligations under Aboriginal and Torres Strait Islander lore.
- (b) Where ceremonial leave is taken for the purposes outlined in **clause 53.4(a)**, up to three days in each year of employment will be with pay. Paid ceremonial leave will not accrue from year to year and will not be paid out on termination of the employment of the Employee.
- (c) Ceremonial leave granted under this **clause 53.4** is in addition to compassionate leave granted under **clause 50**.

## **Supplementary Guidance Information**

### **1. Notice and evidence requirements**

- 1.1. Where the ceremonial leave to be taken is connected with the death of a member of the immediate family or extended family, Employees will need to provide satisfactory evidence to support their entitlement to be absent on ceremonial leave.
- 1.2. For guidance of what constitutes satisfactory evidence, Employers and Employees should refer to clause 50.5 of the Agreement. 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.
- 1.3. 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 submit their leave application as soon as practicable upon their return to duty, together with the required documentation supporting the absence.

## 2. Other leave

- 2.1. Ceremonial leave granted under this clause is in addition to Compassionate Leave (clause 50). Employees of Aboriginal and Torres Strait Islander descent seeking to take Ceremonial leave under clause 53.4 of the Agreement should familiarise themselves with their entitlement to Compassionate Leave under clause 50 of the Agreement.
- 2.2. Where an Employee is on a period of paid annual or long service leave and an entitlement to Cultural and Ceremonial Leave (clause 53) arises, the Employee may request that they be granted that Compassionate Leave and re-credited their annual or long service leave.
- 2.3. An application to substitute leave must include documentary evidence as required by the Agreement.
- 2.4. If the application is granted, the applicable annual or long service leave amount will be re-credited, and the Employee will access their Cultural and Ceremonial Leave.
- 2.5. Where the Employee has already received the annual leave allowance payable under clause 41.4 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 29.5 of the Agreement.

## 3. Meaning of terms used in clause 53 of the Agreement

- 3.1. Ceremonial obligations referred to in clause 53.4(a)(ii) may include funerals, reburials, memorials, reopening of tombs, coming of the light, smoking ceremonies and welcoming ceremonies.
- 3.2. For the purposes of this clause the definition of 'immediate family' has the same meaning as clause 47.1(c) of the Agreement. However, due to complex cultural kinship systems, the connection to 'immediate family' is extended to include the concept of the extended family (see clause 53.4(a)(i)). The Aboriginal and Torres Strait Islander Employee's 'extended family' may include aunty, uncle, niece, nephew, cousin and the traditional adoption of aforementioned people of significant 'importance of consequences' 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. Managers 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.

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## Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 53 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 12 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
- Leave Without Pay
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpvc.vic.gov.au/vps-enterprise-agreement-common-policies/>