



Training Workbook

# Leave Workshop

Participant's Guide  
2009

**Personnel Operations Program  
(POP Team)**

**This training course was developed by the**

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## INTRODUCTION

### Objectives

The objectives of this course are to provide participants with an understanding of:

- the principles surrounding leave in the APS, and
- their agency's primary industrial instrument with regard to annual leave, personal carer's leave, and other leave provisions and the knowledge to correctly calculate and advise employees about such leave entitlements.

### Target Audience

This training course is suitable for those employees who, as part of their duties in a Personnel/HR area, are required to process or administer leave requests.

### Note

- The general conditions of employment contained in this workbook are based on the APS Award 1998 (the minimum award applying in the APS) as varied from time to time and other relevant legislation.

If an agency has displaced the APS Award in their primary industrial instrument (usually a collective agreement), then the only authority generally applying is the primary industrial instrument and other relevant legislation which cannot generally be displaced by an agency.

- Agencies whose employment arrangements come under the *Public Service Act 1999* may have their own determinations on pay and conditions matters.
- **It is therefore important to know which provisions apply in your agency.**

**THE NOTES IN THIS WORKBOOK DO NOT REPLACE PRIMARY REFERENCE MATERIAL**

## REFERENCES

- *Public Service Act 1999*
- *Superannuation Act 1976*
- *Superannuation Act 1990*
- *Superannuation Act 2005*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Workplace Relations Act 1996* (as amended from time to time)
- Workplace Relations Regulations 2006 (as amended from time to time)
- APS Award 1998
  - Clause 27, Annual Leave
  - Clause 28, Personal/Carer's Leave
  - Clause 30, Parental Leave
  - Clause 31, War Service Sick Leave
  - Clause 32, Jury Service
  - Clause 33, Ceremonial Leave
  - Clause 34, Leave to Attend Proceedings as a Witness
- Chief Executive Instructions
- Agency policies or guidelines on leave

**Note:** Public Service Determination 1998/5 was a service-wide determination which has ceased to have authority. Agencies may have included provisions relating to leave from this determination in their agreements.

## DEFINITIONS

**Note:** The following definitions are generally accepted terms, some of which are based on the APS Award. The agency's primary industrial instrument may use different terms.

### **Annual Leave**

A period of paid leave, usually for recreation purposes - also known as recreation leave.

### **Annual Leave Loading**

A payment made when a person proceeds on annual leave, only payable for certain circumstances (e.g. remote localities).

### **Accrual of annual leave**

Employees usually accrue annual leave based on service in a previous period or at a specified rate of accrual, for example, daily, monthly or yearly. An accrual date and period may be specified in an employee's primary industrial instrument.

### **Anticipation of annual leave**

In certain specified circumstances a person may use leave before it falls due, that is, before it is credited (refer APS Award 27.3). This is also known as advance of annual leave.

### **Applications**

Applications for all types of leave should clearly indicate the nature of the leave being requested and the period of absence from duty. The application should be signed by the recommending officer before being submitted to the delegate for approval. Electronic systems may replace paper applications in some agencies.

Some agencies may require employees to provide additional documentation to support applications for other leave. There may also be agency policy guidelines that outline the provisions and procedures of various types of other leave. HR areas should take the content of such guidelines into account when handling applications for leave.

### **Bereavement leave**

Bereavement leave is usually paid leave on each occasion of the death of a member of either the employee's immediate family or a member of the employee's household (refer APS Award 28A)

### **Carer's leave**

Carer's leave may be granted by the Agency Head or delegate to employees who are absent from duty to provide care and support for a member of their immediate family or household who is ill (refer APS Award 28.4).

### **Compensation leave**

Under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), compensation leave covers any absence from work due to a work related injury or illness. The granting of any kind of paid leave (except maternity leave) during a period of compensation leave is specifically precluded under the SRC Act 1988.



**Credit**

The leave balance which an employee has available for use.

**Delegate**

Employees in an agency who are formally authorised to approve leave. Delegations in an agency may be held either centrally within HR/Personnel or devolved to managers.

**Employee**

A person who is employed under Commonwealth legislation, e.g. the *Public Service Act 1999*, ongoing or non-ongoing, full-time or part-time. An Agency's primary industrial instrument will usually define an employee for the purposes of the agreement.

**Other leave with pay**

Other leave with pay includes a variety of paid leave types. The APS Award defines certain categories. An employee's primary industrial instrument may provide categories that are not necessarily the same as the APS Award.

**Other leave without pay**

Other leave without pay includes a variety of unpaid leave types. The APS Award defines certain categories, other industrial instruments may provide categories that are not necessarily the same as the APS Award.

**Part-time**

An employee who has approval to work less than the prescribed full-time hours of duty (refer to APS Award 11.4).

**Personal sick leave**

Personal sick leave may be granted by the Agency Head, or delegate, to employees who are medically unfit for duty.

**Primary Industrial Instrument**

The instrument that has application to the employee. This may include a certified agreement, collective agreement, Australian Workplace Agreement, Determination or Common law arrangement or any other relevant workplace arrangement.

**Recommending Officer**

Usually the immediate supervisor, but may be Section or Branch Head. This may not apply in some agencies.

**Shift Worker**

Employees who are required to work on a regular rostered basis outside or overlapping normal hours of duty (refer APS Award 26.1.1).

**War service sick leave**

Under clause 31 of the APS Award, war service sick leave is available to a limited number of employees who are "returned soldiers" and who suffer from a recognised war-caused disability.

## OVERVIEW OF LEAVE

The principles of annual leave, personal/carer's leave, and other leave are briefly covered below. These principles are generally reflected in the APS Award, although the detail may vary depending on the agency's primary industrial instrument.

### Annual Leave

Annual leave is a form of paid leave that employees are entitled to use for recreation purposes. Some agencies may allow employees to use annual leave for other purposes (this may be left to the discretion of the delegate approving the leave). Most employees, including part-time and non-ongoing employees, have an entitlement to annual leave. Exceptions may include those employees who receive a loading in lieu of leave, such as for irregular/intermittent (casual) employment.

Under the APS Award 1998 (clause 27.1) employees are entitled to annual leave for each year of service. The Award also sets out a formula for calculating leave accrual. The way annual leave is accrued and credited may vary between different agencies, e.g. some agencies may accrue and credit leave monthly, some may accrue and credit leave yearly, and some agencies may have other forms of accrual and crediting. Therefore, it is important to be aware of what is in your agency's primary industrial instrument.

Even though some agencies may not credit annual leave more than once a year, it may be possible for employees to access annual leave before the accrual date; this is generally known as anticipation of leave or an advance of leave. There may be some limits on the amount of leave available for anticipation. For example, if an employee wishes to take annual leave before the actual credit is due they may be allowed to use any leave accrued up until the end of the previous month. Alternatively, some agencies may allow an employee to anticipate an amount from their next credit before that credit is due. Again, it is important to know which provisions apply in the agency and how to apply them correctly.

Annual Leave Loading (ALL), also known as a leave bonus, is a 17.5% income supplement during a period of annual leave. This may still be payable to some employees, for example, employees in remote localities.

Some agencies have provisions in their primary industrial instrument for half-pay and double-pay annual leave and/or provisions to "cash-out" annual leave. There is usually a limit on the amount of leave that can be taken as double-pay or cashed out.

### Personal/Carer's Leave

Personal/carer's leave under the APS Award 1998 is a form of paid or unpaid leave available for absences due to personal illness or injury, caring purposes, or bereavement purposes other than for immediate family members or members of one's household.

The provisions for personal/carer's leave under the APS Award are complex. Most agency primary industrial instruments have simplified the provisions for their agency. Some agencies may refer to personal/carer's leave as sick leave or simply personal leave.

Most employees, including part-time and non-ongoing employees, have an entitlement to personal/carer's leave. However, non-ongoing employees may have a qualifying period before they are entitled to any paid leave. In many agencies this period is 44 working days, but this may vary. Also the amount credited after this qualifying period will vary between agencies. Credits of paid personal/carer's leave are generally based on the nature of employment on the accrual date. Accrual usually occurs annually, for example, on the anniversary date of the employee's commencement with the agency, commencement with the APS or on 1 January as with annual leave.

Unpaid personal/carer's leave may be available where the employee has no entitlement to paid personal/carer's leave, or where the allowable amount of leave without a medical certificate in accordance with the relevant instrument has been exceeded.

### **Other Leave**

Other leave includes a variety of paid and unpaid leave types. The APS Award provides for parental leave, war service sick leave, jury service, ceremonial leave and leave to attend proceedings as a witness.

Agency industrial instruments may provide for other types of leave. However, other leave types may not necessarily be an entitlement and may be at the discretion of the delegate in accordance with agency policies.

### **The Australian Government Employment Bargaining Framework (AGEBF) and Leave**

It should be noted by Agencies developing new agreements that current government policy requires new agreements to comply with the AGEBF. This requires agencies to include leave provisions that support the release of community service volunteers for both emergency services duty and Defence Reserve leave for peacetime training and deployment.

**APS AWARD PROVISIONS – ANNUAL LEAVE****Accrual**

Under the APS Award, clause 27.1, employees are entitled to paid annual leave for each year of employment calculated in accordance with the following formula:

$$\frac{A \times B \times C}{D}$$

where:

- A = number of hours per week for period
- B = number of calendar days to count as service in the period
- C = a basic annual leave credit of 4 weeks plus any additional credits for remote locality service as prescribed in Table 27A of the APS Award
- D = number of actual calendar days in the year of service

Annual leave is accrued in hours and minutes based on a standard 4 weeks of leave per year. Accrual of annual leave is based on the number of calendar days of service in the calendar year.

The result of applying this formula is a credit, expressed in hours and minutes, which is the employee's entitlement. For part-time employees each period of service with different weekly hours is calculated separately. The separate calculations are then added together to get the total credit.

Employees with more than 30 calendar days but less than a year of service receive a pro-rata entitlement (clause 27.1.1 APS Award). This accrual formula may vary dependent on the provisions contained in the relevant agency primary industrial instrument.

**Remote Localities**

Additional paid leave credits for working in certain remote localities are listed in Table 27A of the APS Award. Employees with more than 30 calendar days but less than a year of service in one or more remote localities receive a pro rata entitlement (clause 27.1.2 APS Award).

The extra credit for remote localities is included in part C of the formula for annual leave accrual. For example, an employee commenced in the APS in Cairns on 6 July 2005. Her 2006 accrual is calculated as follows -

$$\frac{36.75 \times 179 \times 4.4}{365} = 79 \text{ hours, 18 minutes annual leave}$$

## **Shift Work**

Shift workers accrue an additional half a day of annual leave (1/10 of a working week) for every Sunday rostered, subject to a maximum of 5 days. A rostered overtime shift of 3 hours or more which commences or ceases on a Sunday counts in the calculation (clause 27.1.4 APS Award).

The following Sunday shifts are treated as follows:

- if a shift worker performs duty on two shifts on one Sunday, only one shift may count
- if a shift worker has been rostered on, but has exchanged shifts with another employee, the employee who was rostered receives the credit, not the employee who actually performed the duty (unless he or she works a rostered second shift)
- if a shift worker is rostered on but takes leave, the employee who performs the shift accrues the extra credit, not the employee who took leave.

## **Top-up Provisions for Part-time Employees**

For all employees leave is deducted on an hour-for-hour basis. This means that leave is deducted at the hourly rate employees are on at the time leave is taken, which may be greater or less than the hourly rate at which part-time employees actually accrued their leave.

Where a part-time employee has increased their weekly hours after accrual of annual leave, they will use it more quickly than they accrue it, and will not have access to the standard 4 weeks paid annual leave.

Clause 27.1.3 of the APS Award makes provision for employees in this situation to have access to Leave Without Pay **To Count As Service** to make up the shortfall in annual leave. There may be similar provisions in agency industrial arrangements.

## **Anticipating Annual Leave**

Clause 27.3 of the APS Award states that if the employer and employee agree, annual leave may be taken in advance of the employee becoming entitled to the leave.

## **Recrediting Annual Leave**

Under the APS Award (clause 28.2.1(b)), if an employee becomes ill while on annual leave they may apply for sick leave and have their annual leave recredited for the period of the illness. To achieve this, the employee must have sick leave credits available, and must produce satisfactory medical evidence stating that he or she was unfit for duty for 1 day or more.

If an employee applies for and is granted bereavement leave while on annual leave of one day or more, annual leave may be recredited.

If operational requirements change while an employee is on annual leave the delegate has authority to recall that employee from leave. If this occurs, the employee is recredited with a

period equivalent to the normal duty actually performed. This may include travelling time and payment of travel allowance may be appropriate.

### **Public Holidays Occurring During Annual Leave**

Agency industrial instruments may provide for payment of public holidays occurring during annual leave or leave without pay.

Under the APS Award (clause 27.5), if a public holiday in an employee's workplace locality falls within a period of annual leave, then leave is not deducted from annual leave credits for that day. Employees on LWOP either before or after a public holiday (or consecutive public holidays) are to be paid for those holidays. For the purposes of this paragraph, the public holidays from Christmas Day to New Year's Day inclusive are regarded as consecutive.

### **Payment in Lieu**

Under the APS Award (clause 27.1.5) where employment ceases, an employee is entitled to payment in lieu of annual leave. Payment in lieu of annual leave is available to employees only when they separate from the APS and cease to be employees, e.g. resignation or retirement, or in the case of a death of the employee. It is not available when an employee commences long term leave, moves between APS agencies on promotion or movement at level, or remains on duty during periods when they have been deemed to be on leave.

Payment in lieu is calculated using the employee's final rate of salary, including allowances that would have been included during annual leave.

For payment in lieu purposes, employees may be divided into two categories:

- those who commenced on or after 26 October 1966
- those who commenced prior to 26 October 1966.

Clause 27.1.6 of the APS Award refers to pre-1966 service and provides a table stating the amount of leave to be deducted depending on the month of commencement.

### **Broken Service for Non-ongoing employees**

Clause 27.1.1 of the APS Award states that all employees with more than 30 calendar days service are entitled to receive payment in lieu of annual leave on cessation. This also applies to non-ongoing employees engaged for a specified term or a specified task on completion of their contract.

Under the APS Award (subclause 27.1.5.b.i) where employees have broken service they will be entitled to payment of a pro rata credit for any additional calendar days of service:

- where they have had more than one period of engagement since the last accrual date, *and*

- where there are periods of service less than 30 calendar days in the previous engagements that have not already been included in final monies calculations for the purpose of payment in lieu of annual leave.

*Note:* Non-ongoing employees engaged in duties of an intermittent or irregular nature and in receipt of a 20% loading **do not** receive payment in lieu of annual leave because these employees do not accrue leave.

### **Annual Leave Loading (ALL)**

Under the APS Award (clause 27.8) annual leave loading accrues in addition to annual leave. From 2 January 1996 annual leave loading was rolled into salary for most APS employees and ceased to accrue. ACT Government employees still accrue annual leave loading. The employee's primary industrial instrument may provide further information on the treatment of annual leave loading.

### **Annual Leave Loading Calculation**

Under the APS Award (clause 27.8) the amount of the loading payable is 17.5% of weekly salary as at 1 January of the year in which the leave accrued, multiplied by the number of hours of leave accrued (subject to a maximum payment limitation).

The calculation is as follows.

$$\frac{\text{Annual Salary} \times 6}{313} \times 17.5\% \times \frac{\text{accrued leave hours on 1 Jan}}{36.75}$$

The first part of the formula results in the gross weekly salary. This should include the employee's annual salary plus any additional payments that the employee would have received on 1 January had they commenced annual leave then.

For most full-time employees, the number of hours leave accrued on 1 January is either 147 hours (based on 36.75 hour week) or 150 hours (based on a 37.5 hour week) proportioned for part-time employees.

*Note:* If an employee receives a pro-rata leave credit, e.g. 10/12 of a full credit, then the annual leave loading would also be a pro-rata payment of 10/12 of a full leave loading.

### **Payment of Annual Leave Loading**

In accordance with Clause 27.8.6 of the APS Award, annual leave loading can be paid if a person takes annual leave after the date on which the loading accrued, and the person requests that the loading be paid.

Once all credits for a particular year are exhausted, the loading for that year should be paid. It is also payable on cessation of employment.

## Maximum limits

Annual leave loading is subject to a maximum payment. Agencies determine their own maximum limits applicable to leave loading, if they still require this.

The DEEWR provided the loading amounts up to 1996. The last DEWR advice was No 73 on 12 November 1996 and included where agencies could obtain the information, based on the Australian Bureau of Statistics male average weekly total earnings for the September quarter.

## Additional leave accrual

Clause 27.8 of the APS Award states that employees who accrue additional leave credits are paid an annual leave loading amount that relates to that additional credit. Some employees accrue additional leave credits in excess of the standard 4 weeks per year. These are:

- employees in remote localities
- employees in difficult overseas posts
- employees in the Antarctic, and
- employees subject to any agreement which provides for more than 4 weeks annual leave.

This provision does not apply to shift workers who are credited with extra leave for Sunday duty.

Historically, employees who accrued additional leave in the circumstances outlined above received a greater annual leave loading in line with their greater accrual of annual leave and their additional allowances (e.g. District Allowance). When the annual leave loading was rolled into salary in January 1996, it was done so on the basis of a standard 4 week annual leave accrual without allowances.

There was no facility to account for any additional amounts accrued in specific circumstances or for the loss of allowances in the calculation of the annual leave loading. As there was a no-detriment approach to the rolling-in of annual leave loading an additional payment for additional leave was adopted which provided for the additional period of leave, but not for the loss of District Allowance in the previous calculation of annual leave loading. Employees in remote localities may still be disadvantaged because of this and may be paid an additional amount on request.

The annual leave loading due under this provision is paid on a one-off basis at the time that employees access the relevant leave. This means it does not have to be requested to be paid.

## OTHER ANNUAL LEAVE ISSUES

### SES Special Leave for Private Purposes

SES employees are generally covered by AWAs (phasing out), Determinations or Common Law Contracts which may include provisions for handling excess leave entitlements.

There were provisions applying to SES relating to Special Bank for excess leave, in the former service-wide PS Det 1998/5 (clause 4.66). This Determination no longer applies.



## Prepayment

Employees going on annual leave may receive prepayment of salary for any pay days that fall within the period of absence if this is provided for in an agency instrument or in the Chief Executive Instructions (an agency's financial instructions). If prepayment is requested, the net amount for each future pay is brought forward and paid on the last payday before the commencement of the leave. The net amount advanced is then recovered from future entitlements.

## Prepayments over 2 financial years

There are important tax implications where a prepayment is made over 2 financial years as tax is assessed when income is **received** not when it is earned. For example, if a salary advance is paid in June and includes salary for the month of July then the employee could be undertaxed.

It is important to advise employees of this tax implication if they wish to receive an advance. To avoid this for the employee they could receive 2 advances, one at the start of their leave and the other at the start of the new financial year.

## Higher Duties Allowance and Annual Leave

According to the APS Award (clause 18.2.4 and sub-clause 18.2.4.a) an employee may continue to receive HDA during annual leave provided:

- the employee was on HDA when they went on leave
- the delegate certifies that the employee would have continued to act in the higher position but for taking leave.

HDA continues during annual leave only to the extent that the employee would have acted but for taking leave. So if the HDA ceases before the annual leave, payment would only be made for the term of the HDA, not the full term of the leave.

**Note:** This also applies when paying out annual leave on cessation, hence HDA can only be paid out for annual leave to the extent it would have continued had the person not ceased employment.

## Compensation

Section 116 of the *Safety, Rehabilitation and Compensation Act 1988* and Comcare Circular number 25 (April 2000) both state that employees on compensation for more than 45 weeks have their annual leave and personal/carer's leave credits reduced for any periods not worked. Long service leave continues to accrue as if the employee is not absent from the workplace. The Leave section of the Guide to APS Pay and Conditions of Employment has some information on this. Advice can also be sought from Comcare.

### **Temporary Movement**

Where an employee is on a temporary movement to another APS agency, taking of annual leave is a matter for negotiation between the employee and the gaining agency. This may be dependent on the period of movement.

### **Cashing-Out Annual Leave**

Some agency primary industrial instruments may provide for the "cashing-out" of annual leave. Minimum and maximum amounts of leave to be cashed-out usually apply, and some agencies may require that a period of leave is taken in conjunction with the cash-out. For example, an employee may only be allowed to cash out a period of leave if they first take a week of leave.

## APS AWARD PROVISIONS - PERSONAL/CARER'S LEAVE

### Accrual for Full-time Ongoing Employees

Personal/carer's leave incorporates the following:

- sick leave
- carer's leave

APS Award provisions state that when employees are engaged as ongoing, they will have access to an entitlement of 10 days full pay personal/carer's leave and 10 days at half pay (clauses 28.2.1 and 28.3.1.a). On completion of each 12 month period of service, a new entitlement of 20 days will be available. This entitlement is made up of 10 days full pay and 10 days at half pay.

In addition to the full pay entitlement, the APS Award (clause 28.3.1.a) states that 10 days accumulated half pay sick leave is credited on engagement and annually thereafter. Note that many agencies have moved away from half pay sick leave and now use only full pay credits instead. In some agencies, dependent on the provisions of the agency's primary industrial instrument, an additional amount for carer's leave is also credited.

The APS Award (clause 28A.1) states that an employee is entitled to up to three days paid bereavement leave on each occasion of the death of an immediate family member or a household member. This is a separate non cumulative entitlement that does not reduce an employees accrued personal/carers leave balance..

Any portion of the 20 day cumulative entitlement that is not utilised in the accrual year, is converted to accumulated personal sick leave with full pay when the new entitlement is made available.

### Accrual for Part-time Ongoing Employees

Under clause 28.2.2 of the APS Award, the 20 days aggregated personal/carer's leave entitlement is available to all part-time ongoing employees and is converted to and expressed in hours and minutes, based on the following formula:

*Weekly hours of duty on engagement or date of leave accrual x 2.6 weeks*

Of the 2.6 weeks which is multiplied by the weekly hours, the 2 week component relates to the cumulative portion, and the 0.6 weeks component relates to the non-cumulative portion. For example, a part-time ongoing employee working 15 hours per week on the date of accrual the available entitlement would be:

- 15 hours per week x 2 weeks = 30 hours
- 15 hours per week x 0.6 weeks = 9 hours

No conversion occurs when a part-time ongoing employee changes hours after their accrual date.

Where a full-time employee becomes part-time, their credits of weeks, hours and minutes are converted to hours and minutes (multiply the credit [in weeks] by full-time weekly hours). Similarly, when a part-time employee becomes full-time, their credits are converted to weeks, hours and minutes, based on the full-time weekly hours (divide the credit by the full-time weekly hours). Some agency industrial instruments may use hours and minutes for all leave types and accruals.

### **Accrual for Non-Ongoing Employees**

#### **First Year Grants**

APS Award (sub-clause 28.6.1.b) states that non-ongoing employees accrue personal/carer's leave with pay during their first year of service after completing 44 days service. At this point 5 days will accrue, with a further day accruing for each 22 days service, up to a maximum entitlement of 8 days.

Of the maximum entitlement of 8 days in the first year of service for non-ongoing employees, only the 5 day cumulative balance may be used for personal sick leave. This means that non-ongoing employees are restricted to a maximum of 5 days sick leave in the first year.

#### **First Year Grants for Returned Soldiers**

Under sub-clause 28.6.1.a of the Award non-ongoing employees who are returned soldiers accrue personal/carer's leave with pay during their first year of service after 22 days service. At this point 4 days accrue, with a further day for each 22 days service, up to a maximum entitlement of 13 days.

As is the case for other non-ongoing employees, returned soldiers may only access the cumulative portion of their accrual for sick leave purposes.

#### **Credits after 12 months of Service**

Sub-clause 28.6.1.e of the Award states that non-ongoing employees accrue additional personal/carer's leave after 12 months continuous service. Employees accrue 23 days personal/carer's leave, less any cumulative personal/carer's leave with pay that was granted in the first year of service. This brings them into line with ongoing employees and personal/carer's leave accrues annually as if they were ongoing employees.

#### **Prior service for Non-ongoing Employees**

If a non-ongoing employee accrues personal/carer's leave in one agency they may be able to transfer and access that credit in another agency, depending on the new agency's CA. For example, some agencies allow non-ongoing employees to access their personal leave credits prior to 44 days of service if the employee's prior service is recognised by the new agency and if the break between agencies was no greater than two months.

## **Deductions from Credits – Sick Leave**

### **All Employees**

Where the employee's personal/carer's leave entitlement is not sufficient to cover an absence or period of absences, or the maximum personal sick leave entitlement has already been deducted from the personal/carer's leave entitlement, the personal sick leave should be debited in the following order:

- first from accumulated full pay sick leave
- then from accumulated half pay sick leave
- then sick leave without pay.

Information on the order of use of leave entitlements was published in a booklet released in September 1996 by the then Department of Industrial Relations titled "Personal/Carer's Leave in the APS". If an agency does not provide for half pay sick leave, when the sick leave with full pay credit is exhausted sick leave without pay applies.

## **Deductions from Credits – Carer's Leave**

### **Full-time Ongoing Employees**

Carer's leave, up to a maximum of 10 days in an accrual year, may be granted on full pay (refer to APS Award 28.4.1). Carer's leave should be debited against the 20 day personal/carer's leave entitlement. Once full pay credits are exhausted then personal/carer's leave would be processed as carer's leave without pay, which does not count as service. The employee may also with agreement of the employer use more than 10 days personal leave as paid carers leave (refer to APS Award 28.4.2)

### **Part-time Ongoing Employees**

As stated earlier, part-time ongoing employees are entitled to a pro-rata amount of and the same access to personal/carer's leave as full-time employees. The accrual and deduction of credits is, however, maintained in hours and minutes. The amount of hours deducted are those that are actually taken, (refer to the section of this workbook on personal sick leave for a discussion and the effect of changes in hours of duty).

Part-time ongoing employees are entitled to take 5 days of their entitlement for carer's leave. If a part-time employee is absent for their normal hours of duty on any day, irrespective of the number of hours, that absence will count as 1 day of the 5 days per accrual year carer's leave entitlement. For part day absences, the *proportion* of the day absent, is deducted from the 5 day entitlement. For example, if a part-time employee works 5 hours per day and is absent for 2.5 hours on a particular day for carer's leave purposes, then a half day of leave is deducted.

## **Non-ongoing Employees**

Non-ongoing employees may access up to 5 days for carer's leave purposes.

Carer's leave is deducted in the same order as for ongoing employees, i.e. first from the cumulative portion, then from the non-cumulative portion, up to the maximum of 5 days. If an employee has exhausted their personal/carers leave entitlement, up to the 5 day maximum, any applications for carer's leave would be without pay, and would not count for service for any purpose.

A non-ongoing employee who has completed 2 years service may have an accumulated full pay sick leave credit. If an employee in this situation has exhausted their personal/carers leave entitlement, they may have carer's leave, up to a maximum of 5 days, deducted from their accumulated full pay sick leave.

## **Deductions from Credits – Bereavement Leave**

### **Full-time Ongoing Employees**

Under clause 28A of the APS Award, bereavement leave, up to a maximum of 3 days per occasion, may be granted on full pay. Accumulated half pay sick leave is not available for bereavement leave purposes. Bereavement leave without pay counts as service for all purposes.

### **Part-time Ongoing Employees**

Part-time ongoing employees are entitled to a pro-rata amount of and the same access to bereavement leave as full-time employees. The accrual and deduction of credits is however, maintained in hours and minutes.

The amount of hours deducted are those that are actually taken, so one full day of absence for a part-time employee will count as 1 day of the 3 days per occasion bereavement leave entitlement. This is regardless of the hours that the employee would have worked on the day.

### **Non-ongoing Employees**

Non-ongoing employees may access up to 3 days per occasion as bereavement leave.

Bereavement leave is deducted in the same order as for ongoing employees i.e. first from the non-cumulative portion, then from the cumulative portion then from any accumulated full pay sick leave. If a non-ongoing employee has exhausted all these entitlements, bereavement leave without pay is then available. Bereavement leave without pay counts as service for all purposes.

Where a non-ongoing employee has not received their first grant of personal/carers leave, that is, they have not completed 44 days (or 22 days in the case of a returned soldier) they continue

to be entitled to paid bereavement leave. If bereavement leave is taken in this period, then such leave is not deducted from personal/carer's leave.

### **Public Holidays Occurring During Personal/Carer's Leave**

If an agency provides for half-pay personal/carer's leave in their CA, the provisions in the CA for payment of public holidays occurring during such leave should be followed.

Where an agency's provisions are based on the APS Award, the e-Guide provides some guidance. The e-Guide (under Working Time, Public Holidays) says personal sick leave will not be debited where an employee is medically unfit for duty on a public holiday which the employee would otherwise have observed. However, where personal sick leave is at half pay or without pay both sides of the holiday, payment is made at either half pay or no pay, whichever applies, for the public holiday. Where the employee is receiving two different rates of pay either side of the public holiday, the employee is entitled to receive the higher rate of pay for the holiday.

### **Deferring Personal/Carer's Leave Accrual**

APS Award clause 28.3.2 states that personal/carer's leave credits are granted at the completion of each 12 month period of service, i.e. usually on the anniversary of commencement. Service in this respect was defined at clause 4.57 of PS Determination 1998/5. Some agencies have brought the accrual date for personal/carer's leave in line with the accrual date for annual leave, i.e. 1 January.

Where the total leave without pay exceeds 30 calendar days since the last personal/carer's leave accrual, the accrual date for personal/carer's leave is deferred by every calendar day of leave without pay taken.

### **Anticipation of Sick Leave**

APS Award (clause 28.3.6) states that during their first 10 years of service ongoing employees may bring forward the next year's cumulative portion of their personal/carer's leave. This is provided that they have exhausted both the cumulative portion of their personal/carer's leave and their accumulated full pay sick leave credits. Anticipation of credits is not automatic, and requests to the delegate must be made in writing. Non-ongoing employees are not permitted to anticipate personal/carer's leave.

An employee who anticipates a credit may not anticipate a further credit until the due date for the previous credit has passed, e.g. a credit due on 12 January 2007 could not be anticipated before 12 January 2006.

The leave brought forward through anticipation may only be used for personal sick leave applications. Access to carer's and bereavement leave can only be made after the personal/carer's leave actual accrual date has arrived.

### Conversion of Half Pay Cumulative Sick Leave

Clause 28.3.4 of the APS Award provides for employees with long service to convert half pay sick leave credits to full pay sick leave credits, other than for short absences.

It is necessary for an agency to be satisfied that the employee has "long service" and the absence will not be a "short" one before they allow conversion.

In the past, long service in the context of conversion of sick leave was taken to mean more than ten years service, as people with less than ten years service were able to anticipate leave. For people with longer periods of service reasonable periods of continuous sick leave half pay were considered to be:

- 10 years service: 10 days
- 20 years service: 5 days
- 30 years service: 2 days

These limitations were not applied if a second absence on sick leave, directly related to a previous absence which enabled the employee to convert half pay credits to full pay, was applied for.

The amount of leave and length of service before conversion is approved, is an issue for agencies to address. The above policy or provisions may be adopted by individual agencies.

A period of half pay converted to full pay means a debit to the half pay credits of double the period of absence on full pay, e.g. 10 days on half pay converts to 5 days full pay.

**Note:** Most APS agency arrangements provide for 18 full days personal leave and half days are not generally included.

### Maximum Period of Personal/Sick Leave

Under clause 28.3.8 of the APS Award, the maximum continuous period of sick leave is 78 weeks, of which no more than 52 weeks may be paid sick leave.

### War Service Sick Leave

Under clause 31 of the APS Award, war service sick leave is only available to a limited number of employees who are "returned soldiers" and who suffer from a recognised war-caused disability.

The nature of the war-caused disability should preferably be advised on a certificate issued by a medical officer of the Department of Veterans' Affairs or a Repatriation Institution. A copy



should be placed on the employee's personal file and the disability should be clearly noted on the sick leave record.

Some employees have 'defence-caused' disabilities that attract repatriation benefits. However if they did not result from actual war service they are not 'war-caused' disabilities.

A medical certificate must support all applications for war service sick leave. If there is no medical certificate the absence is treated as normal sick leave and subject to the limits of the 5 days in each sick leave year without certificate.

War service sick leave credits are all full-pay and consist of two components:

- a special 9 week once-only credit, (if this credit has been granted by another agency then only the unused portion will be available), and
- an annual 3 week accumulative credit up to a maximum credit at any given time of 9 weeks.

The special 9 week credit is used first. The first credit of war service sick leave becomes available on the date of commencement in the service but the employee may not use that credit until evidence that the disability is war-caused has been provided.

If an employee was previously employed by the APS check that war service sick leave credits were not granted by a former agency. If they were, only the balance is available on commencement.

When the employee starts to use the annual 3 week credit, future credits will either be the full 3 week annual credit or a lesser amount that will not cause the maximum allowed credit of 9 weeks to be exceeded.

## APS AWARD PROVISIONS – OTHER LEAVE

### Parental Leave

Clause 30 of the APS Award states that employees are entitled to leave without pay to a maximum of 52 weeks in a 66 week period, commencing on the birth of a child or the day on which responsibility for an adopted child is assumed, to enable the employee to care for the child.

Where an employee has been granted maternity leave under clause 29 of the APS Award the maximum period of combined maternity leave and parental leave may still only be 52 weeks.

There is a limit of 66 weeks leave in total for parents who are both eligible for parental and/or maternity leave under APS Award clause 30 and/or 29.

This leave does not count for service for any purpose.

### Jury Service

Clause 32 of the APS Award states that an employee called to attend a court to serve as a juror may be granted leave for that purpose. Production of an appropriate summons may be required.

Any reasonable expenses incurred by an employee while on jury service will be reimbursed.

Leave to attend as a juror counts as service for all purposes.

### Ceremonial Leave

Clause 33 of the APS Award states that an employee of Aboriginal or Torres Strait Islander descent is granted ceremonial leave without pay to:

- participate in ceremonial activities associated with the death of a member of their immediate or extended family
- to attend other ceremonial obligations under Aboriginal and Torres Strait Islander law.

Ceremonial leave without pay does not count as service for any purpose. Ceremonial leave is in addition to bereavement leave granted under clause 28.5 of the APS Award.

The maximum period of ceremonial leave to be granted over a two year period is 10 days. It should be noted that some agency instruments may provide for paid ceremonial leave entitlements.

### **Leave to Attend Industrial Proceedings as a Witness**

Clause 34 of the APS Award states that leave with full pay is granted to an employee summonsed to attend as a witness at any industrial proceedings under the *Workplace Relations Act 1996*.

The leave is only for such time that the employee is required as a witness. Where the witness is stationed more than 24 kilometres from the place of hearing, the granting of leave with pay is subject to a certificate from a member of the AIRC, the Industrial Registrar, or a Deputy Industrial Registrar that the attendance of that witness is reasonably necessary for the proper presentation of the case.

The Award does not state whether this leave should count as service.

## **ISSUES FOR OTHER LEAVE**

The following types of other leave have their origin in the former PS Determination 1983/10. These were removed from subsequent awards and the former service-wide PS Determination 1998/5. Some agencies may still provide for these leave types in their agreements. This information is supplied mainly for historical reference.

### **Leave to Engage in Employment in the Interest of the Service**

Clause 2.3.12 of PS Determination 1983/10 allowed employees to take leave without pay for the purpose of engaging in employment outside the APS where it was clear there would be a potential benefit to the APS.

Initial grants of leave under this clause were limited to three years and counted for service for all purposes except annual leave, provided that the employee returned to the APS.

### **Accompany Spouse on a Posting**

Clause 2.3.13 of PS Determination 1983/10 allowed employees to take leave without pay to accompany a spouse on a temporary posting overseas or within Australia. This type of leave generally only applied where the employee's spouse was being posted as a result of some form of Commonwealth employment, e.g. a Defence or Foreign Affairs posting. It did not count as service for any purpose.

### **Defence Leave**

Various types of Defence leave were provided for in PS Determination 1983/10 by clauses 2.3.18 to 2.3.22. These included specified Defence service, full-time Defence service, and work or employment in the interests of the Defence or public safety of the Commonwealth.

Specified Defence service did not count as service for any purposes. Full-time Defence service counted as service for all purposes except annual leave. Work or employment in the interests of the Defence or public safety of the Commonwealth counted as service for all purposes but only the first 12 months of this leave counted as service for annual leave.

### **Emergency Services**

Clause 2.3.23 of PS Determination 1983/10 provided for employees who were members of an Emergency Service to be granted leave upon evidence from the police or emergency authority that attendance at specific emergency was necessary.

Up to four days paid leave that counted as service for all purposes could be granted under this clause. Employees could take additional leave if it was required, but this was to be without pay and did not count as service for any purposes.

### **International Sporting Events**

Clause 2.3.25 of PS Determination 1983/10 provided for leave with pay at the substantive level only to be granted to an employee who was an accredited official or a competitor to attend approved international sporting events.

This leave counted as service for all purposes.

### **Leave During Hours of Duty**

Clause 2.3.28 of PS Determination 1983/10 provided for this type of leave to be granted at the discretion of the Agency Head. Leave during hours of duty could be granted with or without pay for up to one day and counted as service for all purposes.

### **Special Circumstances**

Clause 2.3.29 of PS Determination 1983/10 provided for up to three days paid leave in a sick leave accrual period. This was more commonly known as special leave or emergency leave. Common uses were to care for sick family members, moving house, and emergency household situations.

Leave under this clause counted as service for all purposes.

### **Emergency Leave for Disasters**

Clause 2.3.29A of PS Determination 1983/10 provided for a maximum of three days paid leave to be granted to an employee in the event of a disaster such as an earthquake, bush fire, cyclone, etc.

This leave could be granted in addition to special leave granted under clause 2.3.29 and counted for service for all purposes.

### **Leave for any Other Purpose**

Clause 2.3.35 of Determination 1983/10 provided leave without pay for any purpose that was not provided for elsewhere. This type of leave was generally intended for requests based on personal reasons such as travel, family responsibilities, study leave that was not approved under GECA clause 35, or temporary outside employment.

The maximum period of leave that could be granted under this clause was 12 months. This type of leave did not count for service for any purpose.

### **Purchased Leave Schemes**

Some agencies have developed schemes in which employees may elect to have additional leave (without pay) that may be taken at any time in the course of a year. These schemes are usually known as "purchased leave schemes".

Such schemes allow for this leave to be "purchased" through a reduction in fortnightly pay to equal the amount of leave applied for.

This form of leave without pay is generally designed to provide employees with the ability to access more than the standard 4 weeks annual leave, especially where employees have family responsibilities such as caring for children during school holidays.

Purchased leave, although without pay, generally does not effect the accrual of any other leave entitlements such as long service leave, annual leave, or personal/carer's leave.

### IMPACT OF LEAVE WITHOUT PAY NOT TO COUNT AS SERVICE

Any leave without pay (LWOP) granted under the APS Award that does not count as service can affect other Award conditions once the LWOP exceeds 30 calendar days. For the purpose of counting calendar days, an employee is considered on LWOP until they return to duty (including weekends at the end of the period of leave and days which a part-time employee does not usually work).

Further details on how LWOP can affect other Award conditions are as follows:

- **Annual leave** (APS Award clause 27.6)

Service for next credit is reduced by each calendar day of total leave without pay in the calendar year (1 Jan - 31 Dec), once it exceeds 30 calendar days.

Example: LWOP from 27 Aug 2005 to 23 Nov 2005  
 Total absence on LWOP: **91** calendar days  
 Service for credit due on 1 Jan 2005 reduced by **91 days**  
 Total service is therefore  $365 - 91 = 274$  calendar days  
 Accrual calculated as:  

$$\frac{36.75 \times 274 \times 4}{365} = 110.3507 \text{ hours}$$

- **Personal/carer's leave** (APS Award clause 28.3.2)

Accrual deferred by each calendar day where total period of LWOP exceeds 30 calendar days since last accrual.

- **Long service leave** (*LSL (Commonwealth Employees) Act 1976*)

Agencies may defer an employee's accrual date for LSL by each day of LWOP taken once the total LWOP exceeds 30 calendar days in a calendar year (1 Jan - 31 Dec).

Until 1996, more than five days LWOP deferred the accrual date for LSL. The extension of the number of days LWOP NTCAS for LSL purposes from 5 days to 30 days arose out of the Review of Part-Time Employment in the APS (see DIR Advice No 76/1996). Initially agencies

were asked to sign an instrument to effect this change. However, later advice (see DEWR Advice No 1998/13) indicated that the discretion to extend this provision was intended to be exercised on a 'case by case' basis and not globally. Even so, while the 30 day rule for LSL purposes was not intended to be applied globally, DEWR Advice No. 1998/13 stated that this rule should be an appropriate guide to follow in most cases.

- **Note:** The above provisions may be varied by CAs. It is important to know what impact LWOP has on leave accruals in an agency CA.

There are also superannuation implications for members of the PSS and CSS schemes who take LWOP. Refer to the ComSuper Personnel Training Notes or contact ComSuper.

### Miscellaneous – former APS Award provisions

Effective 5 December 1999, the following provisions were removed from the APS Award 1998 as part of the Award simplification process. These types of leave are listed here for historical reference, but may be provided through an agency's CA. If an agency CA calls up this Award as at a date prior to 5 December 1999, rather than 'as varied from time to time' then the agency may still have access to these provisions.

- **Leave To Attend Union Proceedings (Old APS Award clause 38)** - This clause provided for leave to attend industrial proceedings for union members, either to prepare a case or to attend as a witness. Such leave could have been with or without pay, should not have exceeded 3 months in any 12 months and counted as service for all purposes.
- **Trade Union Training Course (Old APS Award clause 40)** - Leave under this provision was only granted to members of a claimant employee association where a certification from the employee that the employee was nominated, or their attendance is supported was supplied. Applications for courses had to contain sufficient information for the delegate to determine if the course would promote a better understanding of industrial relations.
- **Union Leave (Old APS Award clause 39)** - Leave was available under this clause for employees to take up a full time elective or non-elective office with an employee organisation. Staff taking up an elective office were normally granted leave, however, there are provisions to be satisfied before employees are granted leave to take up a non-elective office. LWOP under this clause counted for service for personal/carer's leave purposes and for the qualifying period for long service leave.

Employees who were honorary officials of employee organisations may also have applied for short periods of LWOP under this clause to undertake employee organisation activities. In these cases up to 2 months in aggregate of LWOP in a calendar year would have counted as service for all purposes.

- **Study Leave (Old APS Award clause 41)** - Part-time and full-time study may have been granted as leave with or without pay, having regard for the needs of the agency and the benefit to both student/employee and the agency.

Part-time study leave may have incorporated travel and assessment time, such as examination leave which was a sub-clause of study leave. This leave was with pay and provided for approved students to attend at, or sit for, an examination in connection with their scheme of study.

Study leave with pay or with a portion of pay, counted as service for all purposes. Study leave without pay counted as service for all purposes other than for the accrual of recreation leave. Sick leave credits were reduced by one and one quarter days for each completed period of 12 weeks of study leave.

## HISTORICAL CHANGES TO LEAVE

Numerous changes have been made to the leave entitlements of employees in the APS. Knowing the changes can be helpful when looking at old records, auditing files or making a payment in lieu of leave.

### Annual Leave

- **26 October 1966:** Officers to accrue annual leave on 1 January instead of anniversary of commencement – this resulted in over-credits which should be deducted on cessation from APS.
- **1 January 1973:** The annual leave entitlement changed from 3 weeks per annum to 4 weeks per annum. Payment of annual leave loading was introduced.
- **1 January 1978:** Historically, temporary employees who commenced duty before 1 January 1978 accrued annual leave on the anniversary of their commencement. In August 1978, a common accrual date of 1 January was introduced for all employees. Temporary staff employed prior to 1 January 1978 were gradually changed over to the new accrual date by bringing their accrual date forward by 3 months each year until 1 January was reached. The changeover was completed on 1 January 1982.
- **2 January 1996:** Annual Leave Loading rolled into base salaries and ceased to be paid separately to most employees. This was done as part of the Continuous Improvement in the APS Enterprise Agreement 1995-1996.
- **1 January 1997:** New calculation method for accrual =  $\frac{A \times B \times C}{D}$ 
  - and: credits expressed in hours and minutes
  - credits based on calendar days (not completed months)
  - credits reduced when more than 30 days LWOP taken
  - deduction of leave hour for hour and no salary adjustments made on usage for part-time staff (Part-time Work Review)

Prior to 1 January 1997, accrual of annual leave was based on completed calendar months of service in the preceding calendar year. On separation, the start part month and end part month were added together to see if a further month of accrual could be granted for



payment in lieu of unused annual leave. After 1 January 1997 this procedure no longer applied and a pro-rata credit for the start part month was calculated and added to the 1997 accrual.

### **Sick Leave**

- **24 July 1996** - Introduction of personal/carer's leave which incorporated sick leave, special leave, and bereavement leave, all of which were previously provided for separately. Prior to this date sick leave entitlement was 10 days full pay and 10 days half pay per year, special leave entitlement was three days per year, and bereavement leave entitlement was three days per occasion.

