

Australia Day Holiday with Pay Substitution Guide

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Definitions

Eligible Employee

An “eligible employee” means an employee (except for casual employees) of the Tasmanian State Service who are employed under the following awards:

- Tasmanian State Service Award.
- Facility Attendants (Tasmanian State Service) Award.
- Health and Human Services (Tasmanian State Service) Award.
- Medical Practitioners (Tasmanian State Service) Award.
- Port Arthur Historic Site Management Authority Award.
- AWU (Tasmanian State Sector) Award.
- Nurses and Midwives (Tasmanian State Service) Award.
- Teaching Service (Tasmanian Public Sector) Award

Part time employees are eligible if their work pattern falls on the holiday with pay. If you are unsure whether you are an eligible employee, please speak with you manager or contact human resources.

Senior Executive, Equivalent Specialist and Prescribed Officers are eligible as though they were an employee under the Tasmanian State Service Award.

Australia Day substitution clause

The Australia Day holiday with pay substitution clause provides that:

1. An employee may choose to substitute the Australia Day holiday with pay for another substitution day with pay to be taken within a four-week period from 26 January, as agreed between the employee and employer.
2. Where it is agreed that an employee substitutes the Australia Day holiday with pay, the employees is not eligible for overtime for the ordinary hours worked on the Australia Day.

Substitution process

The substitution process means an eligible employee who chooses to substitute the Australia Day holiday with pay for another substitution day with pay within a four-week period, should discuss this choice with their manager as soon as possible.

Manager

A manager means a person who is responsible for the supervision of employees in their team including requests for Australia Day holiday with pay substitution.

SECTION I

Setting the context

What is the purpose of Australia Day substitution?

In recent years the debate about whether to observe the Australia Day holiday on 26 January has intensified across Australia. Not everyone considers the current date for Australia Day as a reason to celebrate. Many Australians now view January 26 as the date that marks the beginning of the deliberate destruction of Aboriginal and Torres Strait Islander peoples and cultures.

A growing number of TSS employees have requested to observe this public holiday on an alternative date and this change to relevant awards now provides employees with that choice.

Purpose of the Guide

This Guide has been designed as a resource to support managers, supervisors, and employees to understand the Australia Day substitution provision and for managers and supervisors to make informed, respectful, and unbiased decisions in relation to requests for Australia Day substitution from employees.

SECTION 2

Australia Day Substitution

Overview

Relevant awards have been changed to provide for Australia Day holiday with pay substitution and this enables employees to make a choice to access the holiday with pay on an alternative date.

An employee may choose to substitute the Australia Day holiday with pay for another normal working day with pay to be taken within a four-week period from 26 January, as agreed between the employee and their manager.

Australia Day substitution is about providing employees with choice about whether they decide to work the public holiday. Where a substitution day is agreed employees are entitled to be absent from work on that day without loss of pay.

If the Australia Day holiday with pay is agreed to be substituted for a different day, then the holiday with pay is treated like a normal workday.

This means that an employee who chooses to substitute the Australia Day holiday with pay for another day is not eligible for any payment of overtime for the ordinary hours worked on Australia Day.

SECTION 3

Supporting information for managers

A psychologically safe conversation

All employees should feel safe, supported, respected, and included at work. When an employee talks to their manager about their plan to access Australia Day substitution, the intent of the entitlement is that it should be able to be accessed in a respectful way across the Tasmanian State Service.

26 January represents an insensitive and painful reminder of historical events for Aboriginal and Torres Strait Islander peoples and a growing number of TSS employees have requested to observe this public holiday on an alternative date.

Managers should work with employees to encourage safe and open conversations and provide a psychologically safe environment so they can discuss the best way to support them.

The Australia Day Holiday with Pay Substitution Guide is a reference as to how to support an employee to access the entitlement. It is important to think about the sensitivities before entering a conversation with an employee and discuss alternative arrangements if substitution may not be able to be approved.

Be mindful of your language. Your words and meaning may come across differently to that of your intent. Think of the impact.

Please note: If a manager is unsure that the request for Australia Day substitution fits within the intended purpose of the Leave and Holidays with Pay provision in your relevant Award, they should contact their agency HR team for advice and guidance.

SECTION 4

Supporting Information for Employees

How to access Australia Day substitution

If you would like to request access to the Australia Day substitution, have a conversation with your manager or notify them in writing.

Your responsibility

- An employee is to discuss their request with their manager and follow this up with an email to the employer to request Australia Day holiday with pay substitution.

Your Rights

- To be given the opportunity to request access to the Australia Day holiday with pay substitution and for your manager to make an informed decision when considering your request,
- If you are dissatisfied with a decision made about your request to access the Australia Day holiday with pay substitution, it is recommended that you discuss this decision with your manager in the first instance.

Frequently Asked Questions

What happens if I am called in to work on my substitution day? Do I get overtime rates?

Yes. If you are called in to work on your substitution day, you will be paid your relevant holiday with pay overtime rates as if it were a public holiday.

What happens if am already on a period of approved leave (such as recreation or long service leave) during the period when the Australia Day holiday falls, am I able to still substitute Australia Day?

No, the substitution clause allows for you to work on Australia Day, so it doesn't apply if you are on a period of approved leave.

Let's say my manager approves me to substitute the Australia Day holiday with pay for another day. This would require me to work on the Australia Day holiday with pay (which is treated like a normal workday), and I have an agreement with my manager to access the substitution day on another day. What happens if I am sick (or need to care for an immediate family member who is unwell) on the Australia Day holiday with pay? Do I still get access to the agreed substitution day?

If you have agreement with your manager to substitute the Australia Day holiday with pay for another day, and you are sick (or need to care for an immediate family member who is unwell) on the Australia Day holiday with pay, then you should notify your manager and apply for personal leave in the usual manner. The agreed substitution day remains. Likewise, should you work on the substitution day but become unwell on the agreed substitution day, there is no option available to move the agreed substitution day.

What happens if I am not able to take my substitution day within the four (4) week period?

It is important that you work with your manager to find a mutually suitable substitute day within four (4) weeks of Australia Day at the time you discuss and agree to the substitution. In exceptional circumstances where the day cannot be taken within this timeframe, you must discuss this with your manager to find a mutually suitable time to take the substitution day within the following two (2) week period.

What happens if I work a variable work pattern (such as part time hours or shorter days)?

This can be discussed with your manager - if the existing work pattern means that you would not have access to the Australia Day holiday with pay (ie it doesn't fall on a day that is part of your agreed work pattern) then substitution is unable to occur.

If I choose to work on Australia Day, will I still get paid the penalties that would otherwise have applied on the substitution day?

Yes, you will be paid any penalties that you would have otherwise received in accordance with your roster, Award, contract of employment, or your flexible working arrangement. An example of this is the afternoon and evening penalties which apply under the Nursing and Midwifery Award.

How do I apply if I want to request to work on Australia Day?

In the first instance have a conversation with your manager and follow it up with an email seeking to substitute Australia Day and stating your preferred substitution day within four (4) weeks from Australia Day.

Can a request for substitution be declined?

The new clause enables the opportunity to request substitution and a manager should support the request wherever possible.

In exceptional circumstances, it may not be possible to substitute Australia Day. Exceptional circumstances may include, for example, where your workplace may be closed, there is no work available to be done on the day, or due to work health and safety considerations.

What happens if my workplace is closed for the public holiday, can I still choose to substitute Australia Day for another day?

In the first instance have a conversation with your manager to see if it is possible to undertake your duties at an alternative location or undertake other duties for the day.

What happens if I am a shift worker and my day off has fallen on the Australia Day holiday, can I choose to substitute Australia Day?

If you are not rostered to work on the Australia Day holiday with pay you are unable to substitute the day.

If I decide to work on the Australia Day holiday with pay, can I also attend an Invasion Day rally held on 26 January?

Yes, you can attend in your normal meal break time and you can also request to use any accrued flex-time or alternative leave arrangements. As with any leave request, it is important to have a conversation with your manager and to ensure that the request is reasonable and meets workplace needs.



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