



The Tasmanian State Service Aboriginal Cultural Leave Guide

For agency managers and
Aboriginal employees



ACKNOWLEDGEMENT TO COUNTRY

Tasmanian Aboriginal people of lutruwita/Tasmania have always had a deep spiritual connection to Country, spanning over 40,000 years. We acknowledge with respect the deep history of Aboriginal people's continuous connection to Country, Waterways, Sea and Sky Country. With respect we acknowledge and honour Aboriginal Elders, past and present, who hold and share knowledge and memories of family connections and Country. We acknowledge and pay our respects to Tasmanian Aboriginal Cultural Practitioners for keeping Culture and heritage alive.



Clifton Beach, Southern Tasmania Photo credit: TK



Aboriginal Cultural items on display at the TSS Aboriginal Employee Network Gathering November 2022

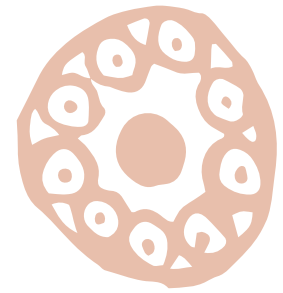


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The Aboriginal Cultural Leave Clause is located on pages 14 and 15.

Click on [Eligibility form](#) to access the form for Tasmanian Government services and programs.



DEFINITIONS

For the purpose of Aboriginal Cultural Leave, Personal Leave, Compassionate and Bereavement Leave

Aboriginal employee

For the purpose of accessing Aboriginal Cultural Leave, Aboriginal employee means an employee of the Tasmanian State Service who is an Aboriginal and/or Torres Strait Islander person and who:

1. meets the Tasmanian Government's eligibility requirements for Aboriginal and Torres Strait Islander programs and services; and
2. has identified as Aboriginal and/or Torres Strait Islander in Employee Self Service or the relevant employment management system.

Aboriginal Cultural Leave

Please refer to the Aboriginal Cultural Leave Clause on pages 14 and 15 of this Guide.

Eligibility Process and Employee Self Service (ESS)

To be eligible for Aboriginal Cultural Leave employees must satisfy the TSS eligibility process as well as having identified themselves as being Aboriginal in Employee Self Service or the relevant employment management system.

Please note: The eligibility process and ESS requirements apply only to Aboriginal Cultural Leave, and do not apply to leave accessed under the Aboriginal Family Relationships provision.

Manager

The manager who has authority to approve Aboriginal Cultural Leave and who the Aboriginal employee's leave request is assigned to for approval.

Senior HR Officer

The designated Senior HR Officer who has responsibility of the Eligibility Register within their agency.

Aboriginal Family Relationships

Eligibility to access Personal (Carers) Leave, Compassionate and Bereavement Leave has been expanded to recognise Aboriginal Family Relationships. Where access to Personal Leave or Compassionate and Bereavement Leave is provided in relation to an 'immediate family' member, an Aboriginal employee may now access that entitlement in relation to a member of that employee's Aboriginal family. This change is created by the addition of a new subclause to the Personal Leave, Compassionate and Bereavement Leave clauses, as provided on page 7 of this Guide.

Please note: The eligibility process and ESS requirements for Aboriginal Cultural Leave do not apply to leave accessed under the Aboriginal Family Relationships provision.

Please also note: Eligibility to access Family Violence Leave has also been expanded to recognise Aboriginal Family Relationships.

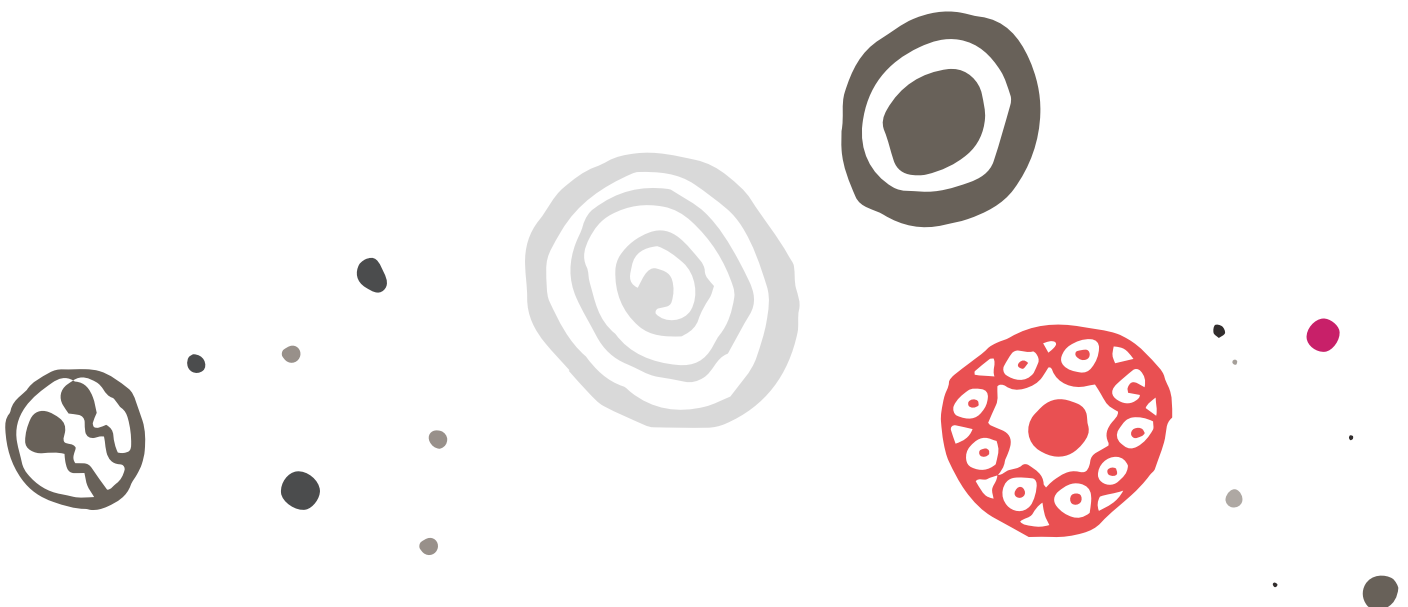
3. PERSONAL LEAVE

- (d) Aboriginal Family Relationships
 - (i) The employer recognises that an Aboriginal employee may have members of their Aboriginal family who are not specified in the definition of 'immediate family' in subclause (a).
 - (ii) For the purpose of accessing the provisions of this clause, an Aboriginal employee may substitute 'Aboriginal family' in the place of 'immediate family'.
 - (iii) Without limitation, Aboriginal family relationships may include immediate family, extended family, kinship and cultural community relationships.
 - (iv) The employer recognises that the concept of family may mean different things to different people within the Aboriginal community and that the definition of the relationships referenced in subclause (d)(iii) may be different for individual employees.
 - (v) The provisions of this subclause also apply to casual employees and the entitlement provided pursuant to subclause (p).

Please note: A provision to the same effect is included in the Family Violence Leave Clause.

4. COMPASSIONATE AND BEREAVEMENT LEAVE

- (d) Aboriginal Family Relationships
 - (i) The employer recognises that an Aboriginal employee may have members of their Aboriginal family who are not specified in the definition of 'immediate family' in subclauses (b).
 - (ii) For the purpose of accessing the provisions of this clause, an Aboriginal employee may substitute 'Aboriginal family' in the place of 'immediate family'.
 - (iii) Without limitation, 'Aboriginal family' relationships may include immediate family, extended family, kinship and cultural community relationships.
 - (iv) The employer recognises that the concept of family may mean different things to different people within the Aboriginal community and that the definition of the relationships referenced in subclause (d)(iii) may be different for individual employees.
 - (v) The provisions of this subclause also apply to casual employees and the entitlement provided pursuant to subclause (h).



SECTION 1

Setting the context

The initial work undertaken to develop an Aboriginal Cultural Leave Provision commenced in 2021 and was led and driven by members of the Tasmanian State Service (TSS) Aboriginal Employee Network. The State Service Management Office (SSMO) Workplace Relations Team provided support, guidance, and expertise to develop the final Aboriginal Cultural Leave Clause which subsequently is part of the Public Sector Union Wages Agreement (PSUWA) for 2023.

Throughout developing the Aboriginal Cultural Leave Clause we were mindful that definitions were open, as Culture moves and changes over time. It was also important to remain true to the meaning of Aboriginal Cultural practices, connections and Cultural obligations.

We thank the TSS Aboriginal Employee Network members who provided input and guidance on the Aboriginal Cultural Leave Provision and provided input into the content of the Guide.

We also thank the invited guests who attended the 2022 Aboriginal Employee Network Gathering for their input into the Guide.

Introduction to the Guide

The Closing the Gap Priority Reforms and target outcomes require Government to work in partnership with Aboriginal Community Controlled Organisations to build stronger foundations for Aboriginal families, Mob and Culture.

The Closing the Gap target outcomes linked to this Guide include:

- Aboriginal and Torres Strait Islander people enjoy high levels of social and emotional wellbeing.
- Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.
- Aboriginal and Torres Strait Islander Cultures and languages are strong, supported and flourishing.

Aboriginal employees working across the TSS should be free to keep their Cultural identity and integrity when they come to and add value to the workplace.

The TSS recognises the importance of Aboriginal employees meeting their obligations to their family, Community, and Culture, and participate in Cultural observances, Aboriginal Community gatherings, meetings and events, whilst maintaining their employment within the TSS.

Access to the new Aboriginal Cultural Leave Provision will enable and support Aboriginal employees to do both, and gives recognition of the unique Cultural value that Aboriginal employees bring to their workplaces, and recognising the Cultural Load that many Aboriginal employees live with daily.

Why we need a Guide

Aboriginal people have experienced a history of dispossession of land, stolen children, and forbidden Cultural practices, often resulting in the inability to fulfill Cultural obligations to their family, Community, and Country.

Obligations to family, Community and Country are at the core of being Aboriginal and are held with pride, strength, and commitment. Given the history and the continuation of inequality many Aboriginal people continue to experience today, these core values and practices will be defended if questioned or denied.

This Guide has been designed as a comprehensive, informative, and Culturally credible resource to support managers to understand the new TSS Aboriginal Cultural Leave Provision, and enable them to make informed, Culturally respectful and unbiased decisions in relation to requests for Cultural Leave from Aboriginal employees.

Using the Guide

The Cultural Leave Guide is for use by Tasmanian State Service agencies and is intended to provide information and advice to managers who have the responsibility to approve requests for Cultural Leave. The Cultural Leave Guide is also for use by TSS Aboriginal employees to provide them with supporting information and to ensure a consistent and transparent flow of information is available to all parties.



SECTION 2

The Aboriginal Cultural Leave Provision

The Eligibility Process

To be eligible to apply for Aboriginal Cultural Leave an employee must meet the Tasmanian Government's eligibility requirements for Aboriginal and Torres Strait Islander programs and services and have identified themselves as an Aboriginal and/or Torres Strait Islander person in Employee Self Service (ESS) or the relevant employment management system. A 'screenshot' of the relevant section on ESS or relevant employment management system is sufficient evidence.

It is important to be aware to not make assumptions that Aboriginal people are all the same when it comes to family, Cultural and Community obligations or are active Aboriginal Community members who participate in Cultural events and activities. Therefore, an Aboriginal employee may not have the need to access Cultural Leave.

The Eligibility Register

The Eligibility Register is currently used by TSS agencies to hold records of eligibility for Government services and programs. The Aboriginal Partnerships Team within the division of Community, Partnerships and Priorities are the custodians of the Register.

This is an outline of the process to be undertaken when an employee makes an application for Aboriginal Cultural Leave:

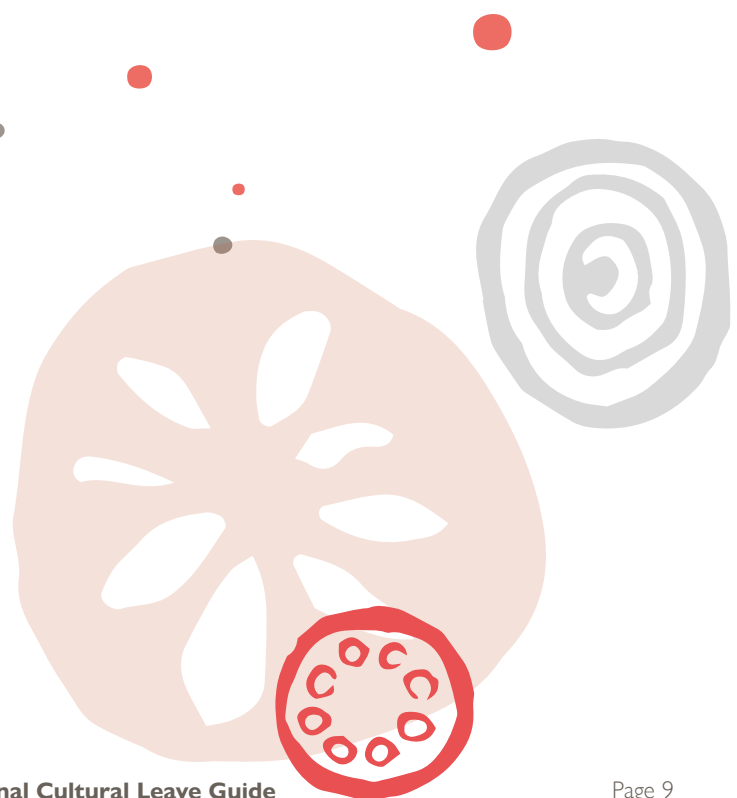
1. In the first instance the manager will contact a designated Senior HR Officer in the relevant agency to determine whether eligibility details have previously been provided.
2. This designated Senior HR Officer would have access to the Register and would undertake a search to confirm whether the records of the Register indicate that the requirement has previously been met.
3. The Senior HR Officer would then inform the manager.

4. If the requirement has been met, then the leave application can be approved.
5. If the requirement has not been met, then the manager will ask the employee to provide the information. (Please refer to page 10 for supporting information)
6. After the information is received by the manager it would then be the responsibility of the Agency (via the Senior HR Officer) to enter those details on the Register for future use.

Importantly, the manager should always have a conversation with HR before a request or question is asked of the employee. From a practical point of view, it may be necessary for an Agency to have several Senior HR Officers with access to the Register to manage absences.

Please note: Where an employee submits an eligibility form for the first time for the purpose of accessing Aboriginal Cultural Leave:

- it is intended that the employee would specify TSS Aboriginal Cultural Leave at the top of page 2 of the form when asked to identify the name of the program or service they are applying for.
- the manager will send the documentation to the Senior HR Officer to upload to the Eligibility Register for future reference.



SECTION 3

Supporting Information for Managers

A Culturally Safe Conversation

There are many sensitivities when it comes to speaking with Aboriginal people about their rights to practice their Culture and obligations to family, their Community and Country. It is important to think about the sensitivities before entering a conversation with an Aboriginal employee, regardless of the reasons. i.e. you need to ask the employee to provide further information, provide the eligibility form or discuss alternative arrangements if the leave application was not approved. Here are some points to consider.

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

If the requirement has not been met, then the manager will ask the employee to provide the information. Note: the manager should always have the conversation with HR before a request or question is asked of the employee.

- Have the discussion in a mutually safe place – not a manager’s office
 - o Ask the employee where they would prefer to meet.
- Never question or query a person’s Aboriginality – the eligibility process to access Aboriginal Cultural Leave is **not** ‘proving your Aboriginality’.
- Managers should have a good understanding of the eligibility requirements and process as they may need to explain these to the employee.
- Aboriginal employees currently in Aboriginal Identified positions would have completed the eligibility process, therefore, it should be a formality to check with HR to confirm the Eligibility Register.

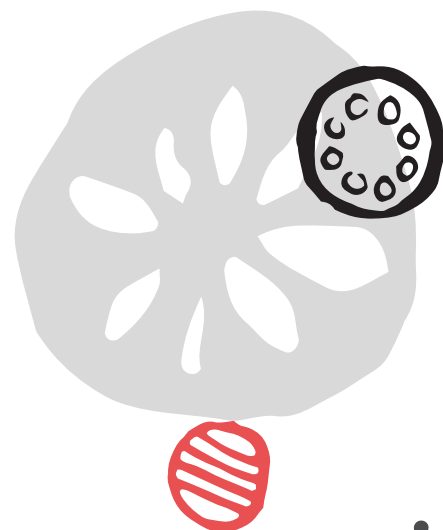
You require further information to support the Leave application

- Clearly explain the information you need and why. Reference the part in the Cultural Leave Clause so the employee can make that connection themselves.
- If you need to ask the employee any questions to clarify information provided:
 - o Be clear on why you need to ask the question.
 - o Reference your question back to the purpose of the Cultural Leave Clause or other relevant parts of the Clause. This allows the employee to see why you are asking a specific question.

Please note: If a manager is unsure that the application for Leave fits within the intended purpose of the Aboriginal Cultural Leave Provision, they should contact their agency Senior HR Officer for advice and guidance.

Information Sessions for managers

Information sessions for managers will be available upon request. To arrange a session please contact the Aboriginal Employment Officer at SSMO@dpac.tas.gov.au



SECTION 4

Supporting Information for Aboriginal Employees

How to apply for Aboriginal Cultural Leave

To apply for Aboriginal Cultural Leave follow the same process in your agency as you would when applying for Recreation Leave. There will be an option (drop down box/list) available which will show Aboriginal Cultural Leave. Please ensure you have either filled in the eligibility form, noting at the top of the page the Program/Service is for Aboriginal Cultural Leave. You will need to scan this and upload the attachment.

If you have already gone through the process of proving your eligibility, please note this in your Leave application form.

Your responsibility

- To provide all the information required to support your application for Aboriginal Cultural Leave including:
 - A completed eligibility form, or note previously completed.
 - Include enough information to make the connections to the purpose you are applying for Cultural Leave (refer to (a) Purpose of Aboriginal Cultural Leave in the Aboriginal Cultural Leave Clause).

Your Rights

- To be given the opportunity to provide to your manager all the relevant information requested for the manager to make an informed decision regarding your Cultural Leave request
- To be provided to you in writing from your manager of the reason/s your application for Aboriginal Cultural Leave was not approved. This should be provided to you as soon as possible to give you time to discuss the decision, and/or alternate leave options or to seek a review of the decision. Reason/s should refer to the Aboriginal Cultural Leave Clause section/s which have not been met.
- You should be given the option, if you wish to, to discuss the decision with your manager including alternate leave options. i.e. Flex leave, other leave alternates.
- If you disagree with the decision made to not approve your application for Aboriginal Cultural Leave, please speak with a Senior HR Officer within your agency for advice.

NAIDOC Week activities and the TSS Aboriginal Employee Network Workshops and Gathering.

The employer supports your attendance (Aboriginal employees) at these events (where occurring in paid time) and recognises that your attendance is legitimate business and forms part of your ordinary duties. In these circumstances, attendance at these events will be counted as time worked and therefore you are not required to access Aboriginal Cultural Leave to attend.

Information Sessions for Aboriginal employees

Information sessions for Aboriginal employees will be available and promoted through the TSS Aboriginal Employee Network as well as across agencies.

If you are interested in attending an information session on Aboriginal Cultural Leave, please contact louise.adams@dpac.tas.gov.au or SSMO@dpac.tas.gov.au

CASE STUDIES

An application for Aboriginal Cultural Leave has been submitted to attend a basket weaving workshop run by TMAG over 3 days. The facilitator is an Aboriginal Elder who has been weaving baskets for many years. The workshop is open to Aboriginal women only. When the workshops are finished the baskets will be on display at TMAG in an Aboriginal Women's Cultural Exhibition. The employee states she is already on the Eligibility Register and included a screenshot of Identification on ESS.

Manager: You have checked with the Senior HR Officer within your agency who is responsible for the Eligibility Register. They have confirmed the employee is on the Eligibility Register.

Analysis: The reason the employee has asked for Aboriginal Cultural Leave meets the requirements of the Aboriginal Cultural Leave Clause (a) Purpose of the Leave Clause and the requirements under (b) Definitions (i), (1) and (2) and (ii) and (3) within 'Aboriginal Cultural events and activities'. Although TMAG is within the Department of State Growth, a State Government Agency who is providing funding for the workshop, the venue and facilitating the exhibition, the workshop is Cultural, Aboriginal led and only for Aboriginal Women.

An application for Aboriginal Cultural Leave has been submitted to attend a Healing Workshop, which is being run over 2 days. There are several workshop facilitators and one of the facilitators is an Aboriginal person. This event is open to anyone wishing to attend. The employee has not provided the eligibility form and they haven't confirmed Identification on ESS.

Manager: You have checked with the Senior HR Officer within your agency who is responsible for the Eligibility Register. They have confirmed the employee is not on the register.

Have the following requirements of the Aboriginal Cultural Leave Clause been met?

(a) Purpose of Aboriginal Cultural Leave

Aboriginal Cultural Leave enables an Aboriginal employee to be absent from work to engage in Aboriginal Cultural practices and meet Cultural

expectations as an active Aboriginal community member during their employment. **This may include participating in significant Aboriginal Cultural events and activities, complying with cultural observances and/or fulfilling cultural obligations.**

(b) Definitions (ii) 'Aboriginal Cultural events and activities' **refers only to Aboriginal community business.**

Analysis: The Healing Workshop is not organised or promoted as an Aboriginal Cultural event and the workshop is open to anyone wishing to attend. Therefore, (a) Purpose of Aboriginal Cultural Leave has not been met and (b) Definition of Aboriginal Cultural events and activities has not been met.

Manager: The manager is to provide supporting reasons for the decision in writing to the employee as soon as possible, and if appropriate the employee and manager may discuss alternative arrangements, i.e. availability of Flex time and/or other Leave options. The manager may also communicate to the employee they can submit the eligibility form for future requests of Aboriginal Cultural Leave as well as identifying themselves as Aboriginal on ESS. This will save the employee having to do this in the future.

Several applications for Aboriginal Cultural Leave have been submitted to attend a Men's Business Yarning event held over 2 days out on Country. The event has been instigated by Aboriginal men, to come together to support, yarn, heal and speak and practice Men's Cultural Business. This event is only open to Aboriginal men. Each leave application has included a screenshot of ESS identification and indicated they are already on the Eligibility Register.

Manager: The manager has checked with the Senior HR Officer who is responsible for the Eligibility Register within their agency. They have confirmed each employee is on the Eligibility Register.

Analysis: The reason each employee has asked for Aboriginal Cultural Leave meets the requirements of the Aboriginal Cultural Leave Clause (a) Purpose of the Leave Clause and the requirements under (b) Definitions (i), (1) and (2) and (ii) within 'Aboriginal Cultural events and activities'.



THE ABORIGINAL CULTURAL LEAVE CLAUSE

11. Aboriginal Cultural Leave

(a) Purpose of Aboriginal Cultural Leave

Aboriginal Cultural Leave enables an Aboriginal employee to be absent from work to engage in Aboriginal Cultural practices and meet Cultural expectations as an active Aboriginal community member during their employment. This may include participating in significant Aboriginal Cultural events and activities, complying with cultural observances and/or fulfilling cultural obligations.

(b) Definitions

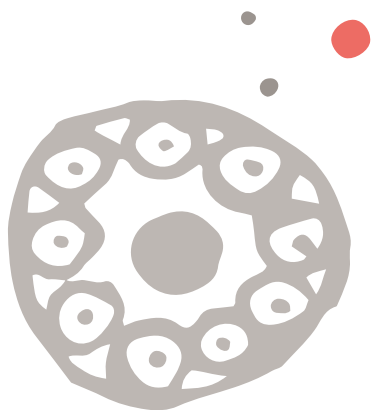
(i) Aboriginal employee for the purpose of this clause means an employee who is an Aboriginal and/or Torres Strait Islander person and who:

- (1) meets the Tasmanian Government's eligibility requirements for Aboriginal and Torres Strait Islander programs and services; and
- (2) has identified as Aboriginal and/or Torres Strait Islander in Employee Self Service or the relevant employment management system.

(ii) 'Aboriginal Cultural events and activities' refers only to Aboriginal community business and for the purpose of this clause does not include:

- (1) NAIDOC Week activities and the TSS Aboriginal Employee Network Workshops and Gathering. The employer supports the attendance of Aboriginal employees at these events (where occurring in paid time) and recognises that their attendance is legitimate business and forms part of their ordinary duties. In these circumstances, attendance at these events will be counted as time worked and therefore the employee is not required to access Aboriginal Cultural Leave to attend.
- (2) Any activities where the employee receives payment (for example, payment to work a mutton bird season; payment to deliver a Welcome to Country, or a similar event, ceremony and/or activity; payment to sit on a board or committee).
- (3) Government events, meetings and/or activities (e.g. sitting on a government Aboriginal advisory or reference groups), except for government events and/or activities which are Aboriginal-led and exclusively for Aboriginal participants. Noting that in accordance with subclause (b)(ii)(1), the employer supports the attendance of Aboriginal employees at the TSS Aboriginal Employee Network Workshops and Gathering and therefore an Aboriginal employee is not required to access Aboriginal Cultural Leave to attend those events.

(iii) 'Cultural obligations' for the purpose of this clause may include, without limitation: cultural and ceremonial obligations under Aboriginal lore, customary or traditional law; or family, customary or community obligations.



(c) Amount of Aboriginal Cultural Leave

- (i) An Aboriginal employee, other than a casual employee, is entitled to leave of up to five days paid leave per personal leave year as specified in Part VIII, Clause 3(c)(non-cumulative). This leave may be taken in hours.
- (ii) Aboriginal Cultural Leave may be taken for part of a single day.
- (iii) Aboriginal Cultural Leave is credited to an employee on the first day of appointment and will be replaced with a new credit on the date each subsequent personal leave year commences.
- (iv) Aboriginal Cultural Leave does not accumulate and is not paid out on cessation of employment.

(d) Payment of Aboriginal Cultural Leave

- (i) Aboriginal Cultural Leave is paid at the normal salary rate which the employee would have received for the ordinary hours of work during the relevant period.

(e) Notice and Application

- (i) An Aboriginal employee should provide notice to the employer at the earliest reasonable opportunity of their intention to access leave under this clause.
- (ii) An employee is to make an application to the employer to access Aboriginal Cultural Leave. The application is to include supporting information which relates to the connection between the application and the purpose of this clause.
- (iii) Where the employer does not approve an application for Aboriginal Cultural Leave, the employer is to provide supporting reasons for the decision in writing to the employee, and if appropriate the employee and employer may discuss alternative arrangements.

(f) Casual employees

- (i) Casual employees are entitled to leave work or not be available to attend work, for the purposes of this clause.
- (ii) The employer and an employee are to agree on the period the employee is entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to five days per annum in the circumstances described in sub-clauses (a) and (b).
- (iii) A casual employee is not entitled to any payment for the period of non-attendance.
- (iv) The employer must not fail to re-engage a casual employee because that employee has accessed the entitlement provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.





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