

For Discussion

Cashing Out Recreation/Annual Leave

Presented by:

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Background

- In May 2020, amendments were made to the *Annual Holidays Act 1944*.
- Local Government workers permitted to cash out annual leave, subject to meeting certain requirements.
- Cashing out of annual leave is available in the private sector and other jurisdictions.
- PSER and Agencies receive a number of queries each year from employees regarding to cash out recreation/annual leave.

Current Provisions - *Annual Holidays Act 1944*

- Sect 3(5) prohibits payment in lieu of taking leave due under the Act, except payment of unused leave on termination.
- Sect 14A contains provisions relating to Local Council Workers and allows payment in lieu of annual holidays if;
 - the employer and employee agree
 - the employee will have 4 weeks annual leave remaining
 - payment is not less than workers ordinary pay

Current Provisions – GSE and Industrial Instruments

- Public Sector Senior Executives can cash out part or the whole of their annual leave provided they have taken at least ten days leave in a particular year (Section 37 GSE Regulation).
- Cl.77.9 of the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* allows cashing out of additional recreation leave for shift workers (87.8.5) and remote workers (cl. 77.1.2).
- Some SOCs have enterprise agreements that contain cashing out provisions in accordance with the *Fair Work Act 2009* such as:
 - Essential Water Enterprise Agreement 2019
 - NSW Trains Enterprise Agreement 2018
 - Forestry Corporation of NSW Enterprise Agreement 2017- 2020

Current Provisions - *Fair Work Act 2009*

- Section 93 of the FW Act provides terms for cashing out annual leave under modern awards and enterprise agreements.
- In 2015, a model clause was created for Modern Awards that did not already contain the provisions for cashing out of annual leave.
- The model provisions allow cashing out of annual leave where;
 - Agreement is made in writing
 - Employee retained 4 weeks of annual leave accrual
 - Limit of 2 weeks to be cashed out in a 12 month period.

Other Jurisdictions

	Is Cashing Out of Leave Available?	Mechanism	Amount Available	Minimum Balance Remaining	Other Conditions
Queensland	Yes	<i>Industrial Relations Act 2016 (QLD)</i> and Circular Guidance	N/A	4 weeks	
Victoria	Yes	Enterprise Agreements and <i>Fair Work Act 2009</i>	Limit of Once during the term of the enterprise agreement.	4 weeks	
Tasmania	Yes	Awards	Limit 1 week per year	4 weeks	
South Australia	No	N/A	N/A		
Western Australia	Yes	Instruments and <i>Minimum Conditions of Employment Act 1993</i>	Limit 50% of entitlements	2 weeks	
Northern Territory	Yes	Agreements and <i>Fair Work Act 2009</i>	Minimum 5 days	4 weeks	
Australian Capital Territory	Yes	Awards/Agreements	N/A	4 weeks	Must take 1 week of leave in conjunction or have taken 1 week in the last 6 months
Commonwealth	Yes	Awards/Agreements and <i>Fair Work Act 2009</i>	N/A	20 days	Must have taken 15 days annual leave in the 12 months immediately preceding the request to cash out

Considerations

- Available to employees in almost all other jurisdictions and private sector.
- *C2020-12 Managing Accrued Recreation Leave Balances* Circular requires agencies to manage balances with 30 limit.
- Historically, recreation leave provisions were to provide employees rest from work.
- Provides flexibility for employees on how they choose to use their leave
- Safeguard mechanisms required to ensure employees are still taking recreation leave and that cashing out is by mutual agreement.