



Victorian Catholic Education Multi Enterprise Agreement 2013

Implementation Guide for Schools

Part 2: Changes to leave entitlements

1. Long service leave

1.1 Summary of changes

The Long Service Leave (**LSL**) provisions have been substantially redrafted to provide for consistency between the Catholic Education Long Service Leave Scheme Rules (**LSL Scheme**), the *Long Service Leave Act 1996* (Vic) (**LSL Act**) and Appendix 3 of the *Victorian Catholic Education Multi Enterprise Agreement 2013* (**VCEMEA 2013**).

While the new provisions should be read in their entirety, the following is a summary of the key aspects of the long service leave entitlements.

1.2 Entitlement to LSL

There has been no change in the VCEMEA 2013 as to who is entitled to LSL. The VCEMEA 2013 continues to apply to full time and part time employees. The administrators of the LSL Scheme will continue to collect levies from employers for eligible employees. Any entitlement to LSL will continue to be paid by the employer but reimbursed by the LSL Scheme.

Further information in relation to casual employees is provided below.

1.3 Calculation of LSL entitlement

There are no changes to the calculation of LSL entitlements or payments.

An employee continues to be entitled to 13 weeks of LSL on completion of 10 years of continuous service in Catholic Education (which can be accessed on a pro rata basis after 7 years).

Thereafter an employee is entitled to:

- 1.20 weeks for each year of service until 28 January 1996
- 1.30 weeks for each year of service from 29 January 1996.

LSL is paid at the Ordinary Rate of Pay of the employee at the time of taking the leave or on termination.

Ordinary Rate of Pay has been clarified and is defined to mean [Clause 5(m)]:

“Ordinary rate of pay” means the current weekly rate for an employee as prescribed in this Agreement plus:

- (i) any regular weekly over-Agreement payments;*
- (ii) any position of leadership allowance which is paid on a regular and continuing basis;*
- (iii) any penalties or allowances in the nature of salary;*

But does not include:

- (i) any overtime;*
- (ii) any travel allowance;*
- (iii) any other allowances that are not in the nature of salary.*

For the avoidance of doubt, where an employee elects to access salary packaging provided by the employer, the employee’s ordinary rate of pay for the purposes of this Appendix will be determined as if the salary packaging arrangements had not occurred.

1.4 Taking LSL

The provisions around the taking of leave in the VCEMEA 2013 are also consistent with those under the former *Victorian Catholic Education Multi Employer Agreement 2008 (VCEMEA 2008)*. As a rule, any period of LSL to which an employee is entitled must be taken in one period [Clause 8.3, Appendix 3]. This is because LSL is intended to provide employees who have given a long period of service to Catholic education, an extended break from work.

However, an employer has the discretion to allow an employee to take the first period of LSL in two or three separate periods, which could include up to 2 individual days.

Further, any subsequent period of LSL to which a person becomes entitled (i.e. a subsequent period being each period of 1.3 weeks that accumulates per additional year of service after 10 years), may, at the employer's discretion, be taken in two separate periods (this can include only one individual day for each subsequent period).

Due to the limitations around the periods of LSL that can be taken, employees should not be permitted to continually take LSL in individual days e.g. one day a week per term.

Example: If an employee accesses 13 weeks of LSL after 10 years, this should be taken in one period, being 13 weeks of leave. However, an employer does have the capacity to exercise their discretion and approve an employee taking this first period of leave in two or three separate periods (e.g. 6 weeks, 5 weeks and 2 weeks).

In the following year, when the same employee has accrued an additional 1.3 weeks of LSL, the employee may take that period of LSL. This period of LSL should be taken in one period. Again however, an employer has discretion to approve an employee taking that subsequent period of LSL in two periods.

1.5 Leave at half pay

LSL can now be taken at half pay. This means that LSL can be taken for double the time at half the pay. This is exclusive of school holidays. During school holidays an employee is paid as they would normally be paid if working their substantive position. [Clause 8.9, Appendix 3]

1.6 Cashing out of LSL

Cashing out LSL is no longer permitted. Employers should be aware that any applications received after 19 November 2013 must not be processed and should be returned to the employee. The LSL Scheme will not reimburse employers for cash payments.

1.7 Termination and portability

The VCEMEA 2013 implements some significant changes in relation to how LSL is paid out upon the termination of an employee's employment in Catholic education. [Clause 7, Appendix 3]

An employee who has an entitlement to LSL at the time of the termination of employment will receive payment in lieu of their LSL entitlement.

However, if an employee intends to resume work in Catholic education within four full school terms, then the employee can request to forgo the pay out of their entitlement in favour of recognition of the LSL entitlement with another employer in Catholic education. Note, the employee must declare at the time of termination the details of the new employer or their intention to seek re-employment. In order to facilitate this declaration, employers will have an obligation to discuss with the employee their intentions and ensure that they

complete a form which confirms as such. Appropriate template forms are being developed by the LSL Scheme and will be provided to employers.

If an employee, despite declaring that they intended to be re-employed within four school terms, does not resume work in Catholic education within that period, then the entitlement will be paid out and must be back dated to the effective termination date. Clause 7 of Appendix 3 provides further detail.

1.8 Entitlements on resumption

The VCMEA 2013 confirms entitlements to LSL upon resumption of service in Catholic education.

Where an employee leaves employment in Catholic education and subsequently resumes employment within Catholic education within a period not exceeding two full years, the service shall be deemed continuous but the time between periods of service shall not be accruable.

Further entitlements to LSL will therefore be calculated from the date of commencement (less any LSL already taken or paid out) i.e. the “clock” is not reset.

However, if the employee resumes employment within a period exceeding two full school years, then the service shall be deemed neither continuous nor accruable. Further entitlements to LSL will be calculated from the date of re-commencement i.e. the “clock” is reset.

1.9 Working during LSL

The VCMEA 2013 expressly prohibits an employee from working whilst taking a period of LSL. [Clause 8.11, Appendix 3].

“Working whilst on LSL” is intended to mean working on the days that the employee would otherwise have been working at the employer from whom the employee is taking LSL.

For instance, where an employee has more than one job (for example, two part time jobs), the situation may differ. If such an employee takes long service leave from one of their part time jobs (Job A), they may continue to work in the other part time job (Job B). However, while they are on long service leave from Job A, they must not work for Job B during the hours for which they would otherwise work for Job A and for which they are being paid long service leave by Job A.

1.10 Casual employees

It is important that employers are aware that casual employees may have an entitlement to LSL under the LSL Act (see sections 62 and 62A of the LSL Act). This is despite the fact they are not covered by Appendix 3 of the VCMEA 2013 nor the LSL Scheme. The LSL Scheme has not applied to casual employees and this remains the case.

Any entitlement to LSL for casual employees must be met by the employer and not the LSL Scheme.

Employers should particularly take note of this in relation to instrumental music instructors and sports coaches who are not covered by the VCMEA 2013, but may be engaged on a regular basis for an extended period of time.

If an employer requires advice or further clarification in relation to casual employees and their entitlement to LSL, please contact the IR Unit.

2. Voluntary emergency management leave (clause 36)

The VCMEA 2013 includes a new entitlement to three days of paid leave for an employee who engages in a voluntary emergency management activity or a community service activity under the *Fair Work Act 2009* (Cth).

It is important to note that this entitlement is in addition to the National Employment Standards under the *Fair Work Act 2009* (Cth), which also entitles an employee to be absent from work, without pay, to assist in the management of emergency situations for as long as required. Under the *Fair Work Act 2009* (Cth), an employee engages in a **voluntary emergency management activity** if and only if:

- the employee engages in an activity that involves dealing with an emergency or natural disaster; and
- the employee engages in the activity on a voluntary basis; and
- the employee is a member of, or has a member like association with, a **recognised emergency management body**; and
- either:
 - the employee was requested by or on behalf of the body to engage in the activity; or
 - no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

A **recognised emergency management body** is:

- A body, or part of a body that has a role or function under a plan that:
 - Is for coping with emergencies and/or natural disasters; and
 - Is prepared by the Commonwealth, a State or a Territory; or
- A fire fighting, civil defence or rescue body or part of such a body; or
- Any other body, or part of a body, a substantial purpose which involves:
 - Securing the safety of persons or animals in an emergency or natural disaster; or
 - Otherwise responding to an emergency or natural disaster.

Essentially, employees who voluntarily assist in the management of emergency situations through approved agencies (for example, the CFA or SES) may be eligible for three days paid Voluntary Emergency Services Leave.

An employer still has the capacity to exercise their discretion to grant more than three days of paid voluntary emergency management leave if they so decide in any given case.

3. Trade union training leave (clause 38)

The trade union training leave provisions have been reinserted into the VCMEA 2013.

This entitlement was not in the VCMEA 2008 due to legislative restrictions at the time of making that agreement.

One Representative of the Independent Education Union Victoria Tasmania per school is entitled to attend trade union training for one day per year. This entitlement is non-cumulative.

4. Compassionate leave (clause 31)

4.1 Summary of changes

The compassionate leave provisions have been rewritten to:

- provide an additional day of compassionate leave for serious illness or injury (increased from up to two days to up to three days)
- ensure consistency between the provisions of the VCEMEA 2013 and the *Fair Work Act 2009* (Cth) in relation to the requirement for evidence of absence on compassionate leave.

4.2 Extended entitlement

An employee (other than a casual) is entitled to up to three days paid compassionate leave on each occasion on which a member of the employee's family or household dies or contracts a serious illness or injury that is life threatening (previously this entitlement was up to two days).

A casual employee is entitled to not attend work for up to 48 hours (or more by agreement) on each occasion on which a member of the employee's family or household dies or contracts a serious illness or injury that is life threatening. The casual employee will not be paid for this time.

4.3 Notice and evidence

As soon as practicable, an employee must give notice of the taking of compassionate leave and the expected duration of the leave.

An employee who has given notice of the taking of compassionate leave can be required to provide evidence that would satisfy a reasonable person of the reason for the taking of leave.

5. Personal Leave (clause 30)

5.1 Summary of changes

The personal leave provisions have been extensively rewritten for clarity and ease of use. In addition, there are some key changes which include:

- The combining of sick and carer's leave into the one 'personal leave' bucket, and no cap on the number of days of personal leave that can be used as carer's leave
- The conversion of the accumulation of personal leave in days to accumulation in hours
- The number of sick leave days that can be taken by an employee before an employer can require the employee to provide evidence is reduced from 10 days to 5 days
- Unpaid sick leave will be subject to a satisfactory evidence and notice detailing the likely length of absence required.

5.2 One entitlement

Personal leave now includes sick leave and carers leave as one entitlement. This means that sick leave and carers leave is all in the 'one bucket'. There is also no limit on the number of days that can be taken as carers leave from an employee's personal leave entitlement. An employee can use any or all of their personal leave entitlement as sick leave or as carers leave.

5.3 Accumulation of personal leave

Personal leave will now accumulate in hours rather than days.

A full time employee will accumulate 114 hours (equivalent to 15 days) of paid personal leave per year. A part time and fixed term employee shall accumulate a pro rata amount of 114 hours based on their number of hours of work.

Personal leave will continue to be credited to an employee on commencement of employment and at the beginning of the school year thereafter. Personal leave already accrued will be converted from days to hours.

5.4 Deduction of personal leave

Full day taken for personal leave

A full time employee, or a part time employee who normally works a full day on the day they are absent due to personal leave, will have 7.6 hours of personal leave deducted from the personal leave credits.

Part of a day taken for personal leave

Clause 30.1(g) states that

The Employer shall deduct from the Employee's personal leave credit to the limit of the credit available any hours the Employee has been absent.

5.5 Notice and evidence

There are changes in relation to the notice and evidence requirements for personal leave (sick and carers leave) in the VCEMEA 2013.

Principals should ensure that all employees are notified of the requirements for providing evidence for absence(s) from work due to personal leave. This will enable employees to be aware of those requirements prior to any absence so that employees have a reasonable opportunity to obtain the relevant evidence during their absence.

Where necessary, school procedure documents, staff handbooks, administrative processes, induction materials etc should be updated to take account of the requirements for when the provision of evidence is required for personal leave. These requirements must be consistent with the relevant provisions of the VCEMEA 2013 which are outlined below.

(i) Sick Leave (clause 30.8)

As soon as practicable, an employee must give notice of the taking of sick leave and the expected duration of the leave. However under the new provisions the employee does not automatically have to provide evidence of a reason for taking sick leave.

In the following circumstances an employer can require the employee to provide a certificate from a registered health practitioner or evidence that would be satisfactory to a reasonable person:

- Absence of more than two consecutive working days
- Absence on the week day immediately before or immediately after the public holiday so long as that week day is a working day

- Where the number of sick days already taken without the production of a medical certificate exceeds five working days in the school year (note that this was previously ten working days).

An employer is entitled to request evidence that would substantiate the reason for leave. A failure to either provide notice or, if required, evidence that would satisfy a reasonable person to substantiate the reasons for the leave, means the employee is not entitled to the leave.

In addition, unpaid sick leave will now be subject to a medical certificate and notice detailing the length of absence required. The requirement to produce a new certificate every 28 days has been removed.

(ii) Carer's leave (clause 30.9)

An employer can require an employee to provide a certificate from a registered health practitioner or evidence that would be satisfactory to a reasonable person when taking carers leave. The evidence must state that the person requires care and support due to illness or an unexpected emergency, and the employee is responsible for the care of the person concerned.

5.6 Registered health practitioners

A registered health professional is registered in accordance with the *Health Professions Registration Act (2005)* in one of the following professions:

- Chiropractors
- Dental care practitioners (including dentists, dental hygienists, dental prosthetists and dental therapists)
- Medical practitioners
- Nurses and midwives
- Optometrists
- Osteopaths
- Occupational therapists
- Pharmacists
- Physiotherapists
- Podiatrists
- Psychologists
- Chinese medicine practitioners (acupuncturists, Chinese herbal medicine practitioners and Chinese herbal dispensers)
- Medical radiation practitioners
- Aboriginal and Torres Strait Islander health practitioners.

6. Parental leave

6.1 Summary of key changes to Appendix 1 – Parental Leave and Related Entitlements

Appendix 1 – Parental Leave and Related Entitlements (Appendix 1) of the VCEMEA details entitlements in relation to parental leave. This appendix has been completely rewritten to include:

- simplified language
- a table of contents
- well-ordered provisions and judicious use of headings.

This approach will make it easier for principals and staff to understand their rights and obligations in relation to parental leave and to find the information they need without fuss.

Within Appendix 1, there have been a number of changes to parental leave entitlements and related processes. Several of these changes, for example, allowing employees to take up to eight weeks of leave at the same time as their spouse, have been made to keep up-to-date with relevant legislation, including the *Fair Work Act 2009*.

Some changes, such as the move from a lump sum payment to paid parental leave, ensure that Catholic education is in step with modern employment practices when it comes to parental leave. A summary of the key changes (listed in the order they appear in the Appendix) is provided below. The clause number in **square brackets** enables reference back to the full text of Appendix 1.

Please note that the Maternity Leave Guidelines and template letters under the previous VCEMEA 2008 are no longer relevant. A suite of new template documents, complete with guidance notes specific to each letter, is available on the CECV IR website <http://web.cecv.catholic.edu.au/vcsa/lettersofappointment/instructions.html>

6.2 General

(i) Eligibility

Employees may now take adoption-related leave in relation to a child who is aged under 16. Previously such leave was limited to adoption of a child aged under 5. [Clause 2(6), Appendix 1]

(ii) Period of leave

The calculation of the 156 week entitlement no longer includes special maternity leave or paid no safe job leave. This means that employees who need to take such leave are not disadvantaged in relation to the length of the remainder of their parental leave. [Clause 3(6), Appendix 1]

The Appendix specifies that employees are, so far as practicable, encouraged to commence parental leave at the end of the school term. While this is not mandatory it aims to assist schools by aligning staff changes with the new term. [Clause 3(9), Appendix 1]

Employees may now take up to eight weeks of leave at the same time as their spouse (previously it was one week only). The eight weeks may be split up into separate periods, but unless the employer agrees, these periods may not be less than two weeks duration. [Clause 3(13), Appendix 1] The Employee is not limited to taking the leave at the time of the birth. [Clause 3(11), Appendix 1]

(iii) Paid parental leave

Under the paid partner leave provisions, fathers are now entitled to one week of paid parental leave (previously they were required to utilise carer's leave). [Clause 4(7), Appendix 1]

Employees are now eligible for paid parental leave, whereas previously they received a lump sum payment. Paid parental leave has advantages for employees in terms of superannuation and leave accrual. It is paid in respect of the first 14 weeks (or one week for paid partner leave) that would otherwise be unpaid, and is exclusive of public holidays, school holidays etc. [Clause 4(9), Appendix 1]

Fixed term employees whose contract ends during their parental leave are now entitled to be paid out the balance of their paid parental leave. For example, a fixed term employee who takes 10 weeks of leave immediately prior to the end of her contract will be paid the remaining 4 weeks as a lump sum. [Clause 4(11), Appendix 1]

(iv) Miscarriage, still birth, child dies or cancellation of placement for adoption

These provisions are significantly more generous, clarifying a previously grey area. Employees who are more than 20 weeks pregnant or who have already commenced leave when there is miscarriage, still birth, the death of the child or cancellation of placement for adoption are entitled to take the full amount of parental leave (including any paid leave) that they originally intended to take (but may return to work early with notice). [Clause 6 and 7, Appendix 1]

6.3 Before leave commences

(i) Notice and evidence requirements

Notice and evidence requirements have been streamlined and simplified. All employees are now required to provide written notice 10 weeks before the intended start date of leave and to provide written confirmation of the dates 4 weeks prior to the intended start date of leave. [Clause 8, Appendix 1]

(ii) Leave within 6 weeks of birth

As per the previous agreement, employers may ask an employee to provide a medical certificate if they continue to work within 6 weeks of the expected date of birth of the child. However, the new Appendix 1 specifies that in certain circumstances, including if the medical certificate says the employee is not fit to work, the employer may then require the employee to commence parental leave early (at which time they can access their paid parental leave). [Clause 12(2), Appendix 1]

6.4 During leave

(i) Paid work during parental leave

The Appendix contains new provisions regarding work during parental leave, including permitting employees to return to work on a temporary basis for their own employer, without constituting a return to work from parental leave. For example, a teacher on parental leave may return to work as a casual relieving teacher for one term before resuming the remainder of her parental leave. In such circumstances, the employee is entitled to be paid their usual rate and the work counts as service. [Clause 15(2), Appendix 1]

Appendix 1 now also provides for **keeping in touch days** as introduced by the *Fair Work Act 2009*. This is a way in which employees may return to work during leave for the occasional day or short period to 'keep in touch' with their employer. Such 'keeping in touch days' require the consent of both the employee and employer. In the Catholic education setting, an employer may wish to utilise such days for professional development and so on. The employee is entitled to be paid their usual rate and the work counts as service. [Clause 15(9)(10), Appendix 1]

(ii) Employee ceases care of child

A new provision confirms that parental leave comes to an end if the employee ceases care of the child and the employer provides the employee with notice. [Clause 16, Appendix 1]

6.5 Returning to work

(i) Changing the end date of leave

Employees still have an automatic entitlement to extend their parental leave on one occasion but are now required to provide 4 weeks' notice of the extension (previously 3 weeks). This gives schools an additional week to make arrangements for replacement staff. [Clause 20(1), Appendix 1]

(ii) Notice of return to work

Employees are required to give 8 weeks' notice (wholly within a school term) of their intended return to work from parental leave (previously it was 7 weeks). Where practicable, an employee is encouraged to give one term's notice. [Clause 22(2), Appendix 1]

(iii) Return to work part-time

Employees who wish to return to work part-time are required to give 8 weeks' notice (wholly within a school term) of their request for part-time work (previously it was 7 weeks). Where practicable, an employee is encouraged to give one term's notice. [Clause 23(2), Appendix 1]

The Appendix clarifies what happens at the end of a part-time work agreement, i.e. if the employer and employee do not enter into a subsequent part-time work agreement, the employee returns to their former (presumably full-time) position. [Clause 23(12), Appendix 1]

Please note that the Maternity Leave Guidelines and template letters under the previous VCMEA 2008 are no longer relevant. A suite of new template documents, complete with guidance notes specific to each letter, is available on the CECV IR website <http://web.cecv.catholic.edu.au/vcsa/lettersofappointment/instructions.html>

6.6 Interaction between parental leave and other leave entitlements

An employee taking parental leave may take only one form of leave at a time.

In relation to school holidays, an employee cannot take parental leave whilst receiving school holiday pay for the same period. Where an employee receives school holiday pay, the period of paid parental leave stops at the start of the school holidays and the employee is then paid their school holiday pay. Any remaining paid parental leave entitlement is paid from the end of the employee's school holiday payment.

In relation to annual leave and long service leave, an employee may instead of, or in conjunction with parental leave, take any entitlement to annual leave or long service leave. At the end of the other paid leave the employee resumes parental leave.

The taking of any paid school holidays, public holidays, annual leave or long service leave does not break the continuity of the period of parental leave and does not extend the period of parental leave beyond the maximum of 156 weeks.

An employee is not entitled to take personal leave, carers leave or community services leave whilst on parental leave.

7. Further information

If you require further information please contact the Industrial Relations Unit on (03) 9267 0431 or ceoir@ceomelb.catholic.edu.au