PURPOSE

1. The purpose of this Advice is to provide guidance to delegates and HR practitioners on key processes that apply to leave for domestic and family violence\(^1\) purposes as provided for in ACTPS enterprise agreements.

BACKGROUND

2. Leave for domestic and family violence purposes was included as a formal entitlement in ACTPS enterprise agreements, effective from 2013, to reflect heightened community understanding of this significant social problem and to appropriately support our employees who experience this form of violence.

3. Leave for domestic and family violence purposes is not a substitute for personal leave which appropriately supports ACTPS employees experiencing domestic and family violence in meeting injury and medically related absences from the workplace.

ISSUES

Leave Eligibility and Entitlement

4. All employees, including casual employees, who are experiencing domestic and family violence are eligible to take leave for domestic and family violence purposes.

5. An employee, except a casual employee, experiencing domestic and family violence will have access to a maximum of 20 days / shifts per calendar year paid leave.

6. Casual employees are entitled to access leave for domestic and family violence purposes, but they are not entitled to payment for that leave.

Applications for Leave

7. It is important that the leave provisions are drafted in a way that ensures that the employee’s privacy and confidentiality can be maintained. Approved applications for paid leave for domestic and family violence purposes are to be submitted by the employee to Shared Services on an application for leave form requesting paid ‘other’ leave with a stated reason of ‘leave not provided for elsewhere’ selected.

8. Under no circumstances is any evidence or supporting documentation to accompany the leave application submitted to Shared Services.

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\(^1\) Note that the Enterprise Agreements use the broad term Family Violence as defined in the Family Violence Act 2016.
Evidentiary Requirements

9. Every situation is unique, and there is no standard formula for the type of evidence that is required and appropriate in every circumstance.

10. The delegate approving the leave should exercise sound judgement in satisfying themselves that the employee is eligible for the leave and what, if any, further evidence is required. Where the delegate requires further evidence this may be in the form of supporting documentation, which could include, but are not limited to, such things as:
   - a document issued by the Police; or
   - a written referral, issued by a registered medical practitioner or registered nurse, to a counsellor trained in providing support in domestic and family violence situations; or
   - a document issued by a Court, or a counsellor trained in providing support to people experiencing the effects of domestic and family violence; or
   - written confirmation from an Employee Assistance Program provider or from a domestic and family violence support service that the employee is experiencing domestic and family violence issues.

11. Where the delegate has decided that supporting documentation is required, but the employee is unable to provide this immediately upon application, the delegate may grant paid leave under personal leave in extraordinary and unforeseen circumstances, subject to available credit (four days in an accrual year). If the employee subsequently produces supporting documentation, the personal leave will be re-credited and the leave taken will be converted to paid leave not provided for elsewhere in accordance with the enterprise agreement provisions.

12. If the employee provides evidence and/or supporting documentation that demonstrates that they will be required to attend multiple appointments or counselling over a continuous period of time, e.g. each Monday for the next two months, then this evidence should be sufficient to approve leave applications for that entire period.

Confidentiality Requirements

13. The employee and/or their representative should be reassured of ACTPS provisions pertaining to confidentiality and record keeping at the time they apply for leave for domestic and family violence purposes.

14. The delegate who has been approached by the employee or their representative regarding a leave application should be the only individual who will view any supporting documentation pertaining to leave applications, unless the employee provides explicit consent to do otherwise or exceptional circumstances exist.

15. Having viewed the supporting documentation, the delegate will immediately return the documentation to the affected employee.

16. There may be instances where an Executive Branch or Executive Group Manager is approached rather than the usual delegate or line manager. In these circumstances the Executive Branch or Executive Group Manager will inform the line manager that other leave has been approved with a stated reason of leave not provided for elsewhere with pay.

17. Under no circumstances is the delegate who has been approached with a leave for domestic and family violence purposes application to share its details with other colleagues without the explicit permission of the employee, unless there is an identified threat or safety concern to other employees in the business unit.

18. It is the responsibility of the delegate who is approached by the affected employee or their
representative with the leave application(s) to keep a confidential and accurate record of the number of days/shifts taken as leave for domestic and family violence purposes against the employee’s entitlement over the calendar year. The delegate should use their sound judgement on the best way to do this to protect and maintain the employees’ privacy and confidentiality.

19. In the event that the employee moves to a new position, or where their delegation/reporting lines have changed, the employee should be asked to consider whom they would feel comfortable approaching to approve future applications for leave for domestic and family violence purposes.

20. If the delegate who has approved leave for domestic and family violence purposes over the course of a calendar year is to move elsewhere in the ACTPS, or is to leave the ACTPS, they should provide the record of the number of days/shifts taken against the employee’s entitlement over the calendar year to another delegate who has been nominated by the affected employee.

Other Considerations

21. Delegates should adopt a flexible approach to applying the domestic and family violence leave provisions and remember that the purpose is to support employees experiencing domestic and family violence.

22. Managers should always seek appropriate advice by HR or the Public Sector Workplace Relations team (without disclosing the identity of the employee) before they refuse domestic and domestic and family violence leave.

23. Domestic and family violence does not affect every individual in the same way and how domestic and family violence is experienced and addressed may also be influenced by cultural differences. It is important that managers recognise and respect the different needs as well as the personal and cultural circumstances of each case when providing support to the affected employee. The ACTPS provides training and support for managers/supervisors and employees on responding to Domestic and Family Violence disclosures and how to do so in culturally sensitive ways.

24. Leave for Domestic and Family Violence purposes is only one of many provisions in the ACTPS enterprise agreements that may assist an employee experiencing domestic and family violence in addressing their situation, with other types of leave, flexible working arrangements, EAP services and other arrangements also available. Managers/Supervisors should actively consider how these provisions may assist the employee and remain conscious of how the employee’s circumstances, background and culture may impact on the support required.

25. Managers/supervisors are not expected to be domestic and family violence experts and should seek assistance from their Human Resources area or the Public Sector Workplace Relations team where necessary. This should be done in a way that maintains the confidentiality of the employee, and HR areas will work with managers/supervisors to make this possible.

26. There is generally no expectation for an employee to provide documentary evidence when they are supporting another person experiencing domestic and family violence when applying for personal leave in extraordinary and unforeseen circumstances as that may breach the privacy of the person experiencing the violence.
REFERENCE

27. The key reference for this advice is:
   > Leave for Family Violence Purposes (as provided in ACTPS enterprise agreements).

28. Further information on how to support employees experiencing domestic and family violence is available through the ACTPS Family Violence Toolkit.

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