Victorian Civil and Administrative Tribunal Act 1998

REMUNERATION AND TERMS AND CONDITIONS OF NON-JUDICIAL MEMBERS OF THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ORDER IN COUNCIL

The Lieutenant-Governor, as the Governor's Deputy, with the advice of the Executive Council under section 17 of the **Victorian Civil and Administrative Tribunal Act 1998** determines the terms and conditions, including remuneration and allowances, of non-judicial members of the Victorian Civil and Administrative Tribunal are as specified in the schedule to the Order.

The Order is effective from the date of its making.

Dated: 21 OCT 2014

Responsible Minister:

Robert Clark MP
Attorney-General

Clerk of the Executive Council

Victorian Civil and Administrative Tribunal Act 1998

REMUNERATION AND TERMS AND CONDITIONS OF NON-JUDICIAL MEMBERS OF THE VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

SCHEDULE TO THE ORDER IN COUNCIL

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BY THE GOVERNOR IN COUNCIL
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1. **Definitions**

1.1.1 Unless the contrary intention appears, the following definitions apply to this Order:

Act means the *Victorian Civil and Administrative Tribunal Act 1998*;

cessation of appointment means retirement, resignation, termination or the end of the term of the appointment;

continuous service means service as a non-sessional member and:

(a) includes any paid leave;

(b) includes service in a previous term as a non-sessional member, provided there was not a break of more than 12 months between the cessation of the appointment and the commencement of the subsequent appointment as a non-sessional member;

(c) does not include unpaid leave (although unpaid leave does not cause a break in continuous service);

(c) does not include any service other than as a non-sessional member;

deputy president means a person appointed as a deputy president of VCAT under section 12 or 16A of the Act;

domestic partner means a person who, although not legally married to the member, lives with the member in a relationship as a couple on a genuine domestic basis (whether the member and the person are of the same sex or different sexes);

eligible child means a person under the age of 16 years who is placed with the member for the purposes of adoption;

eligible period of service means the period of continuous service between four years and seven years;

full-time member means a non-sessional member who is not a part-time member;

immediate family means a spouse (including a former spouse and a former domestic partner), a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the member or the member's spouse;

member means a non-judicial member appointed to VCAT, irrespective of whether the person was appointed before, on or after the date of this Order;

non-judicial member means a member of VCAT other than the President, a Vice-President or a magistrate

non-sessional member means a member who is not a sessional member;

ordinary member means a person appointed as an ordinary member of VCAT under section 14;

part-time member means a member who is, or is taken to be, subject to a part-time service arrangement;

President means the President or acting President of VCAT appointed under section 10 or 26 of the Act;

public office means:

(a) a Government Department or Public Service authority of a state, territory or the Commonwealth of Australia;

(b) a public entity under the *Public Administration Act 2004*; or

(c) a local governing body that is established by or under a law of Victoria;

recognised emergency management bodies include but are not limited to, the Country Fire Authority, Red Cross, State Emergency Service and St John Ambulance;

relevant policies means relevant Victorian Government guidelines that (implicitly or explicitly) provide that they apply to members or a class of people or officers that includes members and, subject to those guidelines, Court Services Victoria policies or Presidential Directions and practice notes. These policies may be amended from time to time.

senior member means a person appointed as a senior member of VCAT under section 13 or 16A of the Act;

sessional member means a member appointed to VCAT on a sessional basis;

spouse includes a domestic partner;

VCAT means the Victorian Civil and Administrative Tribunal established under section 8 of the Act.

2. Power to make the Order

2.1.1 This Order is made under section 17 of the *Victorian Civil and Administrative Tribunal Act 1998* and section 27 of the *Interpretation of Legislation Act 1984*.

3. Application of Order

3.1.1 Subject to clause 3.1.3, this Order applies to all members on and from the date of this Order.

3.1.2 Where an order appointing a member was made on or before the date of this Order, then the terms and conditions set out in this Order, replace the terms and conditions that are set out in that member's instrument of appointment, or that otherwise apply to that member, other than in relation to:

(a) the period (or duration) of the appointment;

(b) whether the person is an ordinary member, senior member or a deputy president;

(c) whether the appointment is sessional or non-sessional;

(d) whether the person is a full-time member or a part-time member.

3.1.3 Clause 9 (Leave) does not apply to members who are appointed to VCAT on a sessional basis.

4. Part-time service

4.1.1 Part-time members are entitled to a pro-rata amount of their leave and other entitlements in accordance with the proportion of full-time duties that are specified to be undertaken by the member in the member's part-time service arrangement.

5. **Duties of the position**

5.1.1 A member will perform the duties of his or her office.

5.1.2 The duties of the office of a member include:

a) complying with the provisions of the Act, regulations and rules made under the Act and other legislation and case law that applies to members;

b) complying with Presidential Directions, including those relating to the conduct of hearings and the timeliness and standard of decisions;

c) treating all parties and representatives consistently with the values of fairness, professionalism and impartiality;

d) contributing to the effective operation of VCAT by:

i. supporting heads of divisions and lists in the discharge of their responsibilities;

ii. maintaining professional and constructive relationships with all members and staff;

iii. encouraging and facilitating team work;

iv. supporting the development of other members;

e) acting with integrity, including:

i. not using the office as a member to promote the personal interests of the member or any other person;

ii. not otherwise misusing the office as a member or bringing it into disrepute;

iii. on ceasing to be a member, continuing to maintain confidentiality and returning VCAT's files, documents and property to VCAT;

f) sitting anywhere in Victoria, as directed by the President, to discharge the business of VCAT;

g) committing to professional training and development, and the highest standards of professional and personal conduct.

5.1.3 The duties outlined in this clause:

(a) are in addition to any duties that are imposed by law, arise in relation to the member's office or otherwise apply to the member; and

(b) do not, in any way, limit the duties of a member.

6. **Annual Remuneration**

6.1.1 The annual remuneration of members of VCAT is as follows:

	With effect on and from the date of this Order
Deputy President	An annual rate of remuneration which is 190,400/241,000 of the annual rate of salary for the time being applicable to a Judge of the Supreme Court (who is not the Chief Justice, President of the Court of Appeal or a Judge of Appeal), rounded to the nearest dollar.

Senior Member	An annual rate of remuneration which is 152,300/241,000 of the annual rate of salary for the time being applicable to a Judge of the Supreme Court (who is not the Chief Justice, President of the Court of Appeal or a Judge of Appeal), rounded to the nearest dollar.
Ordinary Member	An annual rate of remuneration which is 133,400/241,000 of the annual rate of salary for the time being applicable to a Judge of the Supreme Court (who is not the Chief Justice, President of the Court of Appeal or a Judge of Appeal), rounded to the nearest dollar.
Senior Member (Sessional)	A daily sessional rate which is 648/1,025 of the daily sessional rate for the time being applicable to a reserve judge of the Supreme Court (who is engaged to perform duties of a judge of the Trial Division and was not previously a Judge of Appeal) rounded to the nearest dollar. (Half-day rate equal to ½ of the daily sessional rate.)
Ordinary Member (Presiding) (Sessional)	A daily sessional rate which is 626/1,025 of the daily sessional rate for the time being applicable to a reserve judge of the Supreme Court (who is engaged to perform duties of a judge of the Trial Division and was not previously a Judge of Appeal) rounded to the nearest dollar. (Half-day rate equal to ½ of the daily sessional rate.)
Ordinary Member (Non-Presiding) (Sessional)	A daily sessional rate which is 566/1,025 of the daily sessional rate for the time being applicable to a reserve judge of the Supreme Court (who is engaged to perform duties of a judge of the Trial Division and was not previously a Judge of Appeal) rounded to the nearest dollar. (Half-day rate equal to ½ of the daily sessional rate.)

6.1.2 For the avoidance of doubt, if the rate of salary at which the corresponding judicial comparator for a member is altered to a new rate (new judicial rate), the member is entitled to be paid a rate of remuneration calculated by reference to the new judicial rate from the date the new judicial rate takes effect.

6.1.3 If the new annual or daily sessional rate for the member is calculated to include an amount equal to fifty cents, the rate is to be rounded upwards to the nearest whole dollar amount.

6.1.4 The annual remuneration rate specified above is inclusive of the cost of employer superannuation contributions for all members except for sessional members.

6.1.5 For sessional members, the daily sessional rate is exclusive of the cost of employer superannuation contributions and that contribution is paid in addition to this daily rate.

6.1.6 The annual remuneration rate specified above for non-sessional members is inclusive of the cost of a fully maintained motor vehicle, if so selected, on the same terms and conditions as those applying to Executive Officers in the Victorian Public Service and within the policy guidelines issued from time to time by the Victorian Public Sector Commission.

7. Superannuation Obligations

7.1.1 The member is eligible for membership of any complying superannuation scheme.

7.1.2 As noted in clauses 6.1.4 and 6.1.5 above, the annual remuneration rate specified in clause 6.1.1 above is inclusive of the cost of employer superannuation contributions except for sessional members, where the daily sessional rate is exclusive of the cost of employer superannuation contributions.

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7.1.3 The extent of the superannuation payments for a member is determined in accordance with superannuation guarantee legislation.

8. **Expenses claims**

8.1.1 The member is entitled to be reimbursed for his or her reasonable out of pocket expenses if:

(a) the expenses were actually and necessarily incurred in the course of his or her duties; and

(b) the reimbursement is in accordance with any relevant policies.

9. **Leave**

Note regarding part-time and sessional members

Sessional members: clause 3.1.3 above provides that clause 9 (Leave) does not apply to members who are appointed to VCAT on a sessional basis.

Part-time members: clause 4.1.1 above provides that part-time members are entitled to a pro-rata amount of their leave and other entitlements in accordance with the proportion of full-time duties that are specified to be undertaken by the member in the member's part-time service arrangement.

9.1. **Annual leave**

9.1.1 A member is entitled to 20 working days paid annual leave for each year of full-time service. The annual leave entitlement accrues on a daily basis.

9.1.2 A member may only take the annual leave they have accrued, unless otherwise agreed by the President.

9.1.3 All annual leave must be applied for in advance and approved by the President.

9.1.4 Annual leave entitlements must be taken by the end of the calendar year following the calendar year in which they are accrued, unless otherwise agreed by the President.

9.1.5 The member may be directed by the President to take annual leave.

9.1.6 A member may request that the whole or any the part of his or her annual leave is taken at half pay for a period equal to twice the period to which member would otherwise be entitled.

9.1.7 A member, who, upon cessation of appointment has an outstanding annual leave entitlement, will be paid an amount equal to the unused annual leave entitlement.

9.1.8 In addition to annual and other leave entitlements, during the Christmas/New Leave period, the President may allow a member to take up to a maximum of four days leave with pay in the year 2014 and up to a maximum of three days leave with pay in subsequent years. This leave is at the discretion of the President and may be given if he or she is satisfied that it is appropriate to recognise or compensate the member for his or her work contribution in that year, outside of normal working hours. Such leave may be granted conditionally.

9.2. **Purchased leave**

9.2.1 A member may, with the agreement of the President, work less than 52 weeks per year. Purchased leave arrangements apply for a period of one year, and need to be applied for

annually in advance. Access to this entitlement may only be granted on application from a member.

9.2.2 Where the President and a member agree to a reduction in the number of working weeks, the member will receive additional converted leave as follows:

44/52 weeks	Additional 8 weeks' leave	(12 weeks in total)
45/52 weeks	Additional 7 weeks' leave	(11 weeks in total)
46/52 weeks	Additional 6 weeks' leave	(10 weeks in total)
47/52 weeks	Additional 5 weeks' leave	(9 weeks in total)
48/52 weeks	Additional 4 weeks' leave	(8 weeks in total)
49/52 weeks	Additional 3 weeks' leave	(7 weeks in total)
50/52 weeks	Additional 2 weeks' leave	(6 weeks in total)
51/52 weeks	Additional 1 weeks' leave	(5 weeks in total)

9.2.3 The above does not preclude a member and the President from agreeing to a similar type of arrangement that would provide a member with additional converted leave of more than eight weeks. The member will receive a salary equal to the period worked (e.g. 46 weeks or 49 weeks) which will be spread over a 52 week period. Accrual of personal/carer's leave and long service leave by the member shall remain unchanged.

9.2.4 If a member wishes to revert to ordinary 52 week employment during the period of one year agreed purchase leave, the member must give the President no less than four weeks' written notice. Where a member so reverts to 52 week employment, appropriate pro rata salary adjustments will be made.

9.3. **Infectious Diseases / Dangerous Medical Conditions**

9.3.1 If, upon report by a Registered Medical Practitioner that by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by law in respect of such disease, a member is unable to attend work, the President may grant the member special leave of absence with pay. The period of leave must not be for any period beyond the earliest date at which it would be practicable for the member to return to work having regard to the restrictions imposed by law.

9.3.2 Where the President reasonably believes that the member is in such state of health as to render the member a danger to other members, themself or other persons, the President may require the member to absent himself or herself from the workplace until the member obtains and provides to the President a report from a Registered Medical Practitioner. Upon receipt of the medical report, the President may direct the member to be absent from duty for a specified period or, if already on leave, direct such member to continue on leave for a specified period.

9.3.3 Any absence of a member under clauses 9.3.1 and 9.3.2 above must be regarded as personal/carer's leave.

9.4. **Public holidays**

9.4.1 Members shall be entitled to the following holidays without loss of pay:

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(a) New Year's Day, Australia Day, Labour Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Melbourne Cup Day, Christmas Day and Boxing Day.

(b) When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

(c) When Boxing Day is a Saturday or a Sunday, an additional holiday shall be observed on 28 December.

(d) When New Year's Day is a Saturday or a Sunday, an additional holiday shall be observed on the following Monday.

(e) When Australia Day is a Saturday or a Sunday, a holiday in lieu shall be observed on the following Monday.

9.5. **Personal/carer's leave**

9.5.1 A member is entitled to paid personal/carer's leave (also sometimes referred to as sick leave) when they are absent because of:

(a) personal illness or injury; or

(b) personal illness or injury of a member's immediate family or household member who requires the member's care or support; or

(c) an unexpected emergency affecting a member's immediate family or household member.

9.5.2 A full-time member is entitled to paid personal/carer's leave of 114 hours per annum.

9.5.3 Personal/carer's leave will be credited upon appointment and subsequently on the anniversary date of the member's appointment. Unused paid personal/carer's leave accumulates from year to year.

9.5.4 Leave without pay will not count as service for personal/carer's leave accrual purposes.

9.5.5 Accrued personal/carer's leave will not be paid out on cessation of employment.

9.5.6 A member who takes personal/carer's leave is entitled to be paid at his or her salary rate of pay for their ordinary hours of work in the period during which the personal/carer's leave is taken.

9.5.7 If the President has a genuine concern about a member's capacity to undertake their duties, the President may require the member to provide documentary evidence as to capacity in accordance with relevant policies.

9.5.8 Failure by the member to provide documentary evidence as required by the President within a reasonable period of time may render the member ineligible for personal/carer's leave under this clause.

9.5.9 If the period during which a member takes paid personal/carer's leave includes a day or part-day that is a public holiday the member is taken not to be on paid personal/carer's leave on that public holiday.

9.5.10 A member who has exhausted all paid personal/carer's leave entitlements may, with the consent of the President, take unpaid personal leave.

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9.6. **Military service sick leave**

9.6.1 Where the President is satisfied that an illness of a member with at least six months paid continuous service is directly attributable to, or is aggravated by, service recognised under the *Veterans' Entitlements Act 1986* (Cth), including:

(a) operational service; or

(b) peacekeeping service; or

(c) hazardous service -

the member will be credited with 114 hours special leave with pay for each year of service with the Tribunal from the conclusion of the member's operational, peacekeeping or hazardous service. Leave under this clause will be cumulative to a maximum of 760 hours.

9.6.2 This leave is in addition to personal leave.

9.7. **Compassionate leave**

9.7.1 A member is entitled to up to three days paid compassionate leave on each occasion when a member of the member's immediate family or a household member:

(a) contracts or develops a personal illness that poses a serious threat to his or her life;

(b) sustains a personal injury that poses a serious threat to his or her life; or

(c) dies,

each of which constitutes a permissible occasion for the purposes of this clause.

9.7.2 A member may take compassionate leave for a particular permissible occasion if the leave is taken:

(a) to spend time with a member of the member's immediate family or household who has contracted or developed a personal illness or sustained a personal injury; or

(b) after the death of a member of the member's immediate family or household.

9.7.3 A member is not required to take compassionate leave in respect of a permissible occasion consecutively.

9.7.4 Compassionate leave will not accrue from year to year and will not be paid out upon cessation of appointment.

9.7.5 A member who takes compassionate leave is entitled to be paid at his or her salary for ordinary hours of work in the period in which the compassionate leave is taken.

9.7.6 A member may take unpaid compassionate leave by agreement with the President.

9.7.7 In addition to the other provisions of this clause, members of Aboriginal or Torres Strait Islander descent may be granted unpaid leave of up to three days per permissible occasion in relation to the death of an extended family member.

9.8. **Parental leave**

9.8.1 Subject to the terms of this clause, members are entitled to:

(a) paid and unpaid maternity leave;

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(b) paid and unpaid paternity/partner leave;

(c) paid and unpaid adoption leave;

(d) to work part-time in connection with the birth or adoption of a child;

(e) paid permanent care leave; and

(f) unpaid grandparent leave.

9.8.2 Members who have, or will have, completed at least twelve months paid continuous service, are entitled to a combined total of 52 weeks paid and unpaid parental leave on a shared basis in relation to the birth or adoption of their child. A member who does not satisfy the qualifying service requirement for the paid components of leave, shall be entitled to unpaid parental leave for a period not exceeding 52 weeks.

9.8.3 Leave entitlements available are summarised in the following table:

Type of parental leave	**Paid parental leave**	**Unpaid parental leave**	**Total combined paid and unpaid parental leave**
Maternity leave (where member has completed at least twelve months paid continuous service)	14 weeks	38 weeks if primary care giver	52 weeks
Maternity leave (where member has completed less than twelve months paid continuous service)	0 weeks	52 weeks if primary care giver	52 weeks
Paternity/partner	2 weeks	50 weeks if primary care giver 3 weeks if not the primary care giver	52 weeks if primary care giver 5 weeks if not the primary care giver
Adoption leave – primary care giver	14 weeks	38 weeks	52 weeks
Adoption leave – secondary care giver	1 week	2 weeks	3 weeks
Permanent care leave	14 weeks if primary care giver	0 weeks	14 weeks if primary care giver
Grandparent leave	0 weeks	52 weeks if primary care giver	52 weeks if primary care giver

9.8.4 Except where otherwise agreed with the President, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

(a) in the case of paid paternity/partner leave a member shall be entitled to a total of ten days paid leave (which need not be taken consecutively) and up to three weeks unpaid leave in connection with the birth of a child for whom he or she has accepted responsibility which may be commenced one week prior to the expected date of birth; and

(b) in the case of short adoption leave for the secondary care giver, one week's paid leave and up to two weeks' unpaid leave which may be commenced at the time of placement.

9.9. **Maternity leave**

9.9.1 Unless agreed otherwise between the President and member, a member may commence parental leave at any time within 14 weeks immediately prior to the expected date of birth.

9.9.2 Where a member continues to work within a six week period immediately prior to the expected date of birth of the child, the President may require the member to provide documentary evidence as to fitness for normal duties in accordance with relevant policies.

9.9.3 The President may require the member to start maternity leave if the member does not comply with a request for the requested documentation within the time specified within the relevant policies.

9.9.4 Where the pregnancy of a member not then on maternity leave terminates, other than by the birth of a living child, the member may take leave as medically certified as necessary as follows:

(a) where the pregnancy terminates during the first 20 weeks, during the period/s the member is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with the relevant personal/carer's leave provisions;

(b) where the pregnancy terminates after the completion of 20 weeks, during the period/s the member is entitled to paid special maternity leave not exceeding the amount of paid maternity leave available and thereafter, to unpaid special maternity leave.

9.9.5 Where a member not then on maternity leave is suffering from an illness whether related or not to pregnancy, the member may take any paid sick leave to which she is entitled and/or unpaid personal/carer's leave in accordance with the relevant personal/carer's leave provisions.

9.9.6 Where leave is granted, during the period of leave a member may return to work at any time as agreed between the President and the member, provided that time does not exceed four weeks from the recommencement date desired by the member.

9.10. **Adoption leave**

9.10.1 Where the placement of an eligible child for adoption with a member does not proceed or continue, the member will notify the President immediately and the President will nominate a time not exceeding four weeks from receipt of notification for the member's return to work.

9.10.2 A member will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of an eligible child, the death of a spouse, or other compelling circumstances.

9.10.3 A member seeking to adopt an eligible child is, on the production of satisfactory evidence if required, entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The member and the President should agree on the length of the unpaid leave. Where agreement cannot be

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reached, the member is entitled to take up to two days unpaid leave. Where paid leave is available to the member, the President may require the member to take such leave instead.

9.11. **Parental leave**

9.11.1 A member entitled to parental leave may request the President to allow the member:

(a) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;

(b) to extend the period of unpaid parental leave by a further continuous period of unpaid leave not exceeding twelve months;

(c) to return from a period of parental leave on a part-time basis until the child or eligible child reaches school age;

to assist the member in reconciling work and parental responsibilities.

9.11.2 Provided the request is genuinely based on the member's parental responsibilities, the President may only refuse the request on reasonable business grounds related to the effect on the workplace or VCAT's business. Such grounds might include cost, loss of efficiency and the impact on customer service.

9.11.3 The President's decision must be recorded in writing, provide details of the reasons for any refusal, and must be given as soon as practicable, and no later than 21 days after the request is made.

9.11.4 Unless agreed otherwise between the President and member, where a member takes leave the member may apply to the President to change the period of parental leave on one occasion.

9.11.5 The total period of parental leave must not extend beyond 24 months, comprising twelve months for leave taken. The notice must specify the new end date of the parental leave.

9.11.6 A member may, in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed.

9.11.7 Where a Public Holiday occurs during a period of paid parental leave, the Public Holiday is not to be regarded as part of the paid parental leave and the President will grant the member a day off in lieu, to be taken by the member immediately following the period of paid parental leave. A member who reduces the hours of work to better cope during pregnancy will not have her subsequent paid maternity leave reduced accordingly.

9.11.8 Unpaid parental leave shall not break a member's continuity of work but it will not count as service for leave accrual or other purposes.

9.11.9 A member will be entitled to the position which they held immediately before proceeding on parental leave.

9.11.10 Where such position no longer exists but there are other positions available which the Member is qualified for and is capable of performing, the member will be entitled to a position as nearly comparable in status and pay to that of their former position.

9.12. **Permanent care leave**

9.12.1 If pursuant to the *Children, Youth and Families Act 2005*, a member is granted a permanent care order in relation to the custody or guardianship of a child and the member is the

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care giver for that child, the member will be entitled to 14 weeks' paid leave at a time to be agreed with the President.

9.13. **Pre natal leave**

9.13.1 In addition to the maternity leave and personal/carer's leave provisions of this Order, a member will have access to paid leave totalling up to 35 hours per pregnancy to enable her to attend the routine medical appointments associated with the pregnancy.

9.13.2 Any member who has a partner who is pregnant will have access to paid leave totalling up to 7.6 hours per pregnancy to enable their attendance at routine medical appointments associated with the pregnancy.

9.13.3 The President may allow a member who is entitled to paid parental leave to take that leave at half pay for a period equal to twice the period to which the member would otherwise be entitled.

9.14. **Extended Family Leave**

9.14.1 After exhausting all leave entitlements, a member who is the primary care giver may apply for unpaid Extended Family Leave, as an extension of maternity, adoption or paternity/partner leave. The total amount of leave, inclusive of maternity, adoption or paternity/partner leave cannot exceed seven years.

9.14.2 The member must make an application for Extended Family Leave each year. A member will not be entitled to paid parental leave whilst on Extended Family leave.

9.15. **Grandparent leave**

9.15.1 A member is entitled to a period of up to 52 weeks' continuous unpaid grandparent leave in respect of the:

(a) birth of a grandchild of the member; or

(b) adoption of a grandchild of the member.

9.15.2 A member is only entitled to grandparent leave if they are, or will be, the primary caregiver of a grandchild.

9.16. **Leave to attend alcohol / drug / problem gambling rehabilitation program**

9.16.1 A member may be granted leave with or without pay to undertake an approved rehabilitation program where the President is satisfied that:

(a) the member's work performance is adversely affected by the misuse of drugs or alcohol or problem gambling;

(b) the member is prepared to undertake a course of treatment designed for the rehabilitation of persons with alcohol, drug or gambling related problems; and

(c) one of the following applies:

(i) in the case of an alcohol or drug addiction, a Registered Practitioner has certified that in his or her opinion the member is in need of assistance because of their misuse of alcohol or drugs and that the member is suitable for an approved rehabilitation program; or

(ii) in the case of problem gambling the member satisfies the eligibility criteria for entry into an approved problem gambling rehabilitation program.

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9.16.2 On production of proof of attendance at an approved rehabilitation program, a member may be granted leave as follows:

(a) A member who has completed two years' continuous service and who has exhausted all other accrued leave entitlements may be granted leave with pay up to the maximum number of days specified below:

Years of Service	First Year of Program	Subsequent Years of Program
2 years	20 days	15 days
3 years	27 days	20 days
4 years	33 days	25 days
5 or more years	40 days	30 days

(b) A member who has completed less than two years continuous or aggregate service may be granted leave without pay for the purposes of attending an approved rehabilitation program.

9.17. **Cultural and ceremonial leave**

9.17.1 The President may approve attendance during working hours by a member of Aboriginal or Torres Strait Islander descent at any Aboriginal community meetings, except the Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur. The President may grant a member of Aboriginal or Torres Strait Islander descent accrued annual or other leave to attend Annual General Meetings of Aboriginal community organisations at which the election of office bearers will occur.

9.17.2 Ceremonial leave without pay may be granted to a member of Aboriginal or Torres Strait Islander descent for ceremonial purposes:

(a) connected with the death of a member of the immediate family or extended family (provided that no member shall have an existing entitlement reduced as a result); or

(b) for other ceremonial obligations under Aboriginal and Torres Strait Islander law.

9.17.3 Ceremonial leave granted is in addition to compassionate leave.

9.18. **Long service leave**

9.18.1 A member is entitled to three months long service leave with pay for each period of ten years' paid full-time continuous service in VCAT.

9.18.2 A member is entitled to access their long service leave entitlement, on a pro rata basis, after an initial seven years of paid continuous service.

9.18.3 A member who, upon cessation of appointment, has an outstanding long service leave entitlement will be entitled to an amount equal to the unused long service leave entitlement.

9.18.4 Where a Public Holiday occurs during a period of long service leave granted to a member, the Public Holiday is not to be regarded as part of the long service leave and the President will grant the member a day off in lieu.

9.18.5 A member is entitled, or in the case of death is deemed to have been entitled, to an amount of long service leave with pay equalling one fortieth of the member's eligible period of appointment to the Tribunal service if:

(a) the member served between four and seven years of continuous service; and

(b) one of the following apply:

(i) the appointment of the member ceases on account of age or ill health; or

(ii) the member dies.

9.18.6 A member is entitled to take their long service leave at the current time fraction they work. For the avoidance of doubt, but subject to operational requirements, a member may take long service leave of one day.

9.18.7 The President and the member may agree that the whole or any part of the member's entitlement can be taken at a different time fraction to that currently worked.

9.18.8 After concluding their period of leave, the member will return to the time fraction they worked immediately prior to going on leave, unless otherwise agreed by the President and the member.

9.18.9 The President may determine the time for granting long service leave so that VCAT's operations will not be unduly affected by the granting of long service leave to numbers of members at or about the same time.

9.18.10 A member who has served in public office immediately prior to appointment and who had *not* accrued a long service leave entitlement in the prior public office, is entitled to have that service recognised for the purposes of accruing a long service leave entitlement as a member.

9.18.11 A member who has served in public office immediately prior to appointment, and who had accrued a long service leave entitlement in the prior public office:

(a) is not entitled to long service leave in the current office (or payment for that leave) in respect of the period of service in the prior public office (whether or not any of the leave was taken or paid out); and

(b) is entitled to have the period of service in the prior public office recognised for the purpose of determining when the member is eligible to take long service leave accrued in the current office.

9.18.12 This Order does not recognise prior service in a public office for which a long service leave entitlement would not have accrued had the member remained in the prior public office.

9.18.13 Service for the purpose of long service leave does not include any period of service:

(a) which preceded a continuous gap in recognised prior service of greater than twelve months other than:

(i) an absence of three years or less in the nature of retirement occasioned by disability; or

(ii) an absence of two years or less which in the opinion of the President was caused by special circumstances; or

(b) during any absence from duty on maternity, paternity/partner or adoption leave without pay; or

(c) except to the extent (if any) authorised by the President, during any other absence on leave without pay; or

(d) during any absence from duty when the member was in receipt of weekly payments of compensation under the *Accident Compensation Act 1985* or any corresponding previous enactment, other than the first twelve months of that period;

(e) from which the member was removed on the ground of proved misbehaviour or incapacity.

9.18.14 An application for the recognition of prior service must be made within six months of a member's starting date in VCAT.

9.18.15 A member is not entitled to long service leave (or payment for long service leave) in respect of any period of service:

(a) for which the member was entitled to receive long service leave (or payment for long service leave) from an employer, other than the President; or

(b) for which the member has received long service leave (or a payment in respect of long service leave) from any employer.

9.19. **Defence Reserve Leave**

9.19.1 A member required to complete Defence Reserve service may be granted leave up to a maximum period of 78 weeks' continuous service.

9.19.2 Where the remuneration received by the member from the Australian Defence Force or Defence Reserve service is below the member's usual remuneration, the member will, unless exceptional circumstances arise, be paid make-up pay for the period of Defence Reserve service.

9.20. **Leave for blood donations**

9.20.1 Leave may be granted to a member without loss of pay to visit the Red Cross Blood Bank as a donor once every twelve weeks.

9.21. **Leave to engage in voluntary emergency management activities**

9.21.1 A member who engages in a voluntary emergency management activity with a recognised emergency management body that requires the attendance of the member at a time when the member would otherwise be required to be at work is entitled to leave with pay for:

(a) time when the member engages in the activity;

(b) reasonable travelling time associated with the activity; and

(c) reasonable rest time immediately following the activity.

9.21.2 A member who is required to attain qualifications or to requalify to perform activities in an emergency management body may be granted leave with pay for the period of time required to fulfil the requirements of the training course pertaining to those qualifications, provided that such training can be undertaken without unduly affecting the operations of VCAT.

9.22. **Study leave**

9.22.1 The President may grant to any member paid leave to undertake an accredited course of study provided by an educational institution or registered training organisation.

9.22.2 A member may be granted sufficient paid leave to enable travel to and attendance at [illegible] seven hours of classroom activity or related project work per week.

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9.22.3 The President may grant additional leave with or without pay as considered necessary so as to undertake study approved by the President under clause 9.22.1.

9.22.4 A member may be granted up to five days paid leave per annum as pre-examination leave and sufficient paid leave to attend examination where the examinations are part of the course of study for which leave has been approved.

9.22.5 A member completing an accredited course through the submission of major project work may be entitled to five days leave per annum for the purposes of finalising such project work.

9.23. **Leave without pay**

9.23.1 A member may be granted leave without pay by the President for any purpose.

9.23.2 Unless otherwise provided for in this Order, leave without pay shall not break the member's continuity of employment, but leave without pay will not count as service for leave accrual or other purposes.

9.24. **Notice and documentary evidence required for leave**

9.24.1 A member must give notice and provide documentary evidence in relation to any leave specified in this Order, as required by the relevant policies.

9.24.2 The relevant policies may specify circumstances in which the failure to provide the required notice or documentary evidence results in the person being ineligible for some or all of the leave or payment in relation to that type of leave.

10. **Occupational health and safety**

10.1. Where a member is absent from duty as a result of sustaining an injury in respect of which the member is entitled to weekly payments of compensation under the *Accident Compensation Act 1985* (Vic), the member will, except where otherwise provided in clause 9.2 below, be entitled to accident make-up pay equivalent to his or her normal remuneration less the amount of weekly compensation payments.

10.2. The member will continue to be provided with accident make-up pay for a period of 52 weeks, or an aggregate of 261 working days unless employment ceases.

10.3. An entitlement to accident make-up pay will cease at the end of a period of 52 weeks or an aggregate of 261 working days or when the appointment ceases or when the benefits payable under the *Accident Compensation Act 1985* (Vic) cease.

10.4. The President may grant the member leave without pay where an entitlement to accident make-up pay has ended.

10.5. For the avoidance of doubt, the member may, with the President's consent, take annual leave or long service leave whilst receiving accident make-up pay.

10.6. A member may access any employee assistance program available to members of the public service and the Judicial Counselling Service Victoria.

11. **Telephone, electronic equipment and motor vehicles**

11.1. The member's use of telephones and electronic equipment for work purposes is governed by any relevant policies.[1]

[1] The term "relevant policies" is defined in clause 1.

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11.2. The member's use (if any) of motor vehicles and fleet vehicles and access (if any) to car parking for work purposes is governed by any relevant policies.

12. **Transitional Arrangements**

12.1. A member who, immediately before this Order came into force, had accrued long service leave, recreation leave or sick leave, has, from the commencement of the Order, an entitlement to such leave, which can be exercised in accordance with the terms of this Order.

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