



DEPARTMENT FOR CORRECTIONAL SERVICES

CHIEF EXECUTIVE INSTRUCTION 20-04

This Chief Executive Instruction (CEI) supersedes previous correspondence regarding Overtime and TOIL.

For **GENERAL** distribution to:

- GENERAL MANAGERS
- REGIONAL DIRECTORS
- EXECUTIVE DIRECTORS
- CENTRAL OFFICE DIRECTORS
- BUSINESS CENTRE MANAGERS

RE: OVERTIME MANAGEMENT AND TIME OFF IN LIEU OF PAYMENT OF OVERTIME (TOIL)

The following instruction provides advice in managing Overtime and Time Off in Lieu of Payment of Overtime (TOIL) within the Department for Correctional Services ("the Department").

INDUSTRIAL PROVISIONS FOR OVERTIME AND TIME OFF IN LIEU OF PAYMENT OF OVERTIME

The *South Australian Modern Public Sector Enterprise Agreement: Salaried 2017* ("EA 2017") was approved on 31 January 2018. Clause 16 of the EA 2017 contains provisions for Overtime and clause 26 of the EA 2017 contains provisions for TOIL.

Clauses 6.1 and 9.1 of the *S.A. Public Sector Salaried Employees Interim Award* ("the Award") also contains Overtime and TOIL provisions for employees of the Department, whilst Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave details the minimum requirements as per the *Public Sector Act 2009* (the "PS Act").

The requirements outlined in the Award and EA 2017 must be met by Managers when determining Overtime and TOIL arrangements.

KEY CONSIDERATIONS FOR OVERTIME AND TOIL

TOIL and Flexitime Accruals were previously detailed together in clause 18 of the superseded *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014*.

These clauses were amended in the EA 2017 and Overtime, TOIL and Flexitime are now detailed in separate clauses as outlined above. It is important to note that Overtime and TOIL are different from Flexitime provisions. Please refer to the [Flexitime Management, Meal Breaks and Record Keeping Requirements](#) for more information regarding the management of Flexitime.

The Department may require an employee to work reasonable overtime, however this decision is based on business requirements.

As per subclause 6.1.5 of the Award, payment for overtime must be authorised and will only be made if approved by the Department prior to it being worked.

An agreement to take TOIL can be made before or after the working of the overtime. The time taken as TOIL is to be the same amount of time as the overtime worked and taken at a mutually agreed time.

With regard to part time employees, in accordance with Determination 3.1 of the Commissioner for Public Employment, Employment Conditions – Hours of Work and Overtime, time worked up to 7.5 or 7.6 hours per day/37.5 or 38 hours per week is not to be regarded as Overtime but as an extension of the normal hours of duty for that day/week, and the employee is to be remunerated at their normal rate of pay. Overtime will not be payable unless the total time worked exceeds 8 hours for the day/37 or 38 hours for the week.

CONVERSION OF TOIL

1. TOIL for the purpose of Overtime

Clause 26.6 (i) of the EA 2017 states that an employee may accrue TOIL for the purpose of Overtime *by requesting TOIL either before or after the overtime is worked, and with the agreement of the employer.*

Pursuant to clause 26.9 of the Award, where an employee has been permitted to accrue TOIL for the purpose of Overtime in excess of 10 days, and where the employee has applied to convert such TOIL into payment, such payment will be made:

- (a) *at the original overtime penalty rate for Time Off in Lieu of payment of Overtime accrued in accordance with subclause 26.6 (i).*

Please note that approvals for Overtime and TOIL should be attached to and recorded on the timesheet.

2. TOIL for the purpose of Travel

Whilst it is the practice and preference of DCS for travel to occur within working hours for all employees this is not always possible. Therefore, travel time applies where an employee is required by the direction of the employer to travel on official duties outside their normal working hours and is away from their normal worksite/office.

Clause 26.6 (ii) of the EA 2017 states that an employee may accrue TOIL for the purpose of *travel outside of normal working hours being taken as TOIL under the terms of clause 8.1 of the Award.*

Pursuant to clause 26.9 of the EA 2017, where an employee has been permitted to accrue TOIL in excess of 10 days, and where the employee has applied to convert such TOIL into payment, such payment will be made:

- (b) *at the ordinary rate of pay for Time Off in Lieu for the purposes of Overtime accrued in accordance with subclause 26.6 (ii).*

Please note that approvals for TOIL for the purpose of travel need to be maintained outside of the timesheet due to the different rates of pay that apply. There is no provision to record TOIL for the purpose of Travel on the timesheet.

3. Payment of TOIL upon resignation/termination

Clause 26.11 of the EA 2017 where an employee ceases employment, the employee will be paid for any accrued TOIL in accordance with sub clause 26.9 (b) which states:

Pursuant to clause 26.9 of the EA 2017, where an employee has been permitted to accrue TOIL in excess of 10 days, and where the employee has applied to convert such TOIL into payment, such payment will be made:

(a) *at the ordinary rate of pay for Time Off in Lieu for the purposes of Overtime accrued in accordance with subclause 26.6 (ii).*

It is imperative that separate records are kept at the business level to determine TOIL for the purpose of Overtime and TOIL for the purpose of travel as the Departmental timesheet is not able to accommodate this information to reflect the different types of TOIL and different rates of pay that may apply.

To claim for payment of the above, an employee is required to complete the Shared Services SA (SSSA) Claim form and forward to the relevant delegate for approval.

All Managers and Supervisors are expected to manage any arrangements for overtime and TOIL in consultation with staff to ensure work, health and safety obligations are met.

Further advice may be sought from Workforce Management, People and Business Services.



DAVID BROWN

Chief Executive

Approved: 20 / 02 / 2020