



**Australian Government**

# **The National Employment Standards**



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# The National Employment Standards

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1 **The National Employment Standards**

2 **Division 1—Preliminary**

3 **1 Definitions**

4 In this Part:

5 *adoption-related leave* means leave under Division 4 of either of  
6 the following kinds:

- 7 (a) unpaid parental leave taken in association with the placement  
8 of a child for adoption (see section 16);  
9 (b) unpaid pre-adoption leave (see section 30).

10 *applicable award-derived long service leave provisions* has the  
11 meaning given by subsection 53(2).

12 *appropriate safe job* has the meaning given by subsection 27(4).

13 *authorised leave* has the meaning given by subsection 12(5).

14 *available parental leave period* has the meaning given by  
15 subsection 21(2).

16 *base rate of pay* of an employee has the meaning given by  
17 section 4.

18 *birth-related leave* means leave under Division 4 of either of the  
19 following kinds:

- 20 (a) unpaid parental leave taken in association with the birth of a  
21 child (see section 16);  
22 (b) unpaid special maternity leave (see section 26).

23 *born to* has the meaning given by subsection 16(2).

24 *child*, in relation to a person, has the meaning given by section 5.

25 *compassionate leave* means compassionate leave to which an  
26 employee is entitled under section 45.

27 *continuous service* has a meaning affected by section 7.

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Section 1

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- 1            **day of placement**, in relation to the adoption of a child by an  
2            employee, means the earlier of the following days:
- 3            (a) the day on which the employee first takes custody of the  
4            child for the adoption;
- 5            (b) the day on which the employee starts any travel that is  
6            reasonably necessary to take custody of the child for the  
7            adoption.
- 8            **de facto partner**, in relation to an employee:
- 9            (a) means a person who, although not legally married to the  
10            employee, lives with the employee in a relationship as a  
11            couple on a genuine domestic basis (whether the employee  
12            and the person are of the same sex or different sexes); and  
13            (b) includes a former de facto partner of the employee.
- 14            **eligible community service activity** has the meaning given by  
15            section 49.
- 16            **employee couple**: two employees are an **employee couple** if each  
17            of the employees is the spouse or de facto partner of the other.
- 18            **excepted period** has the meaning given by subsection 7(2).
- 19            **full rate of pay** of an employee has the meaning given by section 6.
- 20            **immediate family**: the following are members of an employee's  
21            immediate family:
- 22            (a) a spouse, de facto partner, child, parent, grandparent,  
23            grandchild or sibling of the employee;
- 24            (b) a child, parent, grandparent, grandchild or sibling of a spouse  
25            or de facto partner of the employee.
- 26            **industry-specific redundancy scheme** means redundancy  
27            arrangements in a modern award that are described in the award as  
28            an industry-specific redundancy scheme.
- 29            **jury service pay** means an amount paid under a law of the  
30            Commonwealth, or of a State or Territory, for or in respect of jury  
31            service, other than an amount that is, or that is in the nature of, an  
32            expense-related allowance.

- 1           ***jury service summons*** means a summons or other instruction  
2           (however described) that requires a person to attend for, or  
3           perform, jury service.
- 4           ***medical certificate*** means a certificate signed by a medical  
5           practitioner.
- 6           ***medical practitioner*** means a person registered, or licensed, as a  
7           medical practitioner under a law of a State or Territory that  
8           provides for the registration or licensing of medical practitioners.
- 9           ***National Employment Standards*** has the meaning given by  
10          subsection 2(3).
- 11          ***paid annual leave*** means paid annual leave to which an employee  
12          is entitled under section 32.
- 13          ***paid no safe job leave*** means paid no safe job leave to which an  
14          employee is entitled under paragraph 27(3)(b).
- 15          ***paid personal/carer's leave*** means paid personal/carer's leave to  
16          which an employee is entitled under section 38.
- 17          ***piecemaker*** means an employee who, in a modern award that  
18          applies to the employee's employment, is defined or described as a  
19          piecemaker.
- 20          ***pre-parental leave position*** has the meaning given by subsection  
21          28(2).
- 22          ***public holiday*** has the meaning given by section 54.
- 23          ***school age***, in relation to a child, means the age at which the child  
24          is required by a law of the State or Territory in which the child  
25          lives to start attending school.
- 26          ***school-based apprentice*** means an employee who is an apprentice  
27          and whose employment is subject to a school-based training  
28          arrangement.
- 29          ***school-based trainee*** means an employee (other than a  
30          school-based apprentice) whose employment is subject to a  
31          school-based training arrangement.
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Section 2

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- 1                    ***school-based training arrangement*** means a training arrangement  
2                    undertaken as part of a course of secondary education.
- 3                    ***seasonal employee*** means an employee engaged on a seasonal  
4                    basis within the meaning of subsections 638(8) to (10).
- 5                    ***serious misconduct*** has the meaning given by the regulations.
- 6                    ***service*** has the meaning given by section 7.
- 7                    ***spouse*** includes a former spouse.
- 8                    ***unpaid carer's leave*** means unpaid carer's leave to which an  
9                    employee is entitled under section 43.
- 10                  ***unpaid parental leave*** means unpaid parental leave to which an  
11                  employee is entitled under section 16.
- 12                  ***unpaid pre-adoption leave*** means unpaid pre-adoption leave to  
13                  which an employee is entitled under section 30.
- 14                  ***unpaid special maternity leave*** means unpaid special maternity  
15                  leave to which an employee is entitled under section 26.

16                  **2 Purpose of Part**

- 17                  (1) The purpose of this Part is to set out minimum standards that apply  
18                  to the employment of employees.
- 19                  (2) The minimum standards relate to the following matters:  
20                      (a) maximum weekly hours (Division 2);  
21                      (b) requests for flexible working arrangements (Division 3);  
22                      (c) parental leave and related entitlements (Division 4);  
23                      (d) annual leave (Division 5);  
24                      (e) personal/carer's leave and compassionate leave (Division 6);  
25                      (f) community service leave (Division 7);  
26                      (g) long service leave (Division 8);  
27                      (h) public holidays (Division 9);  
28                      (i) notice of termination and redundancy pay (Division 10);  
29                      (j) Fair Work Information Statement (Division 11).

1 (3) This Part constitutes the *National Employment Standards*.

2 **3 Relationship between National Employment Standards and**  
3 **modern awards**

4 (1) A modern award must not exclude the National Employment  
5 Standards or any provision of the National Employment Standards.

6 (2) A modern award may include the following kinds of provisions:

7 (a) provisions that are ancillary or incidental to the operation of  
8 an entitlement of an employee under the National  
9 Employment Standards;

10 (b) provisions that supplement the National Employment  
11 Standards;

12 but only if the effect of those provisions is not detrimental to an  
13 employee in any respect, when compared to the National  
14 Employment Standards.

15 Note 1: Ancillary or incidental provisions permitted by paragraph (a) include  
16 (for example) provisions:

17 (a) under which, instead of taking paid annual leave at the rate of  
18 pay required by section 35, an employee may take twice as much  
19 annual leave at half that rate of pay; or

20 (b) that specify when payment under section 35 in respect of paid  
21 annual leave must be made.

22 Note 2: Supplementary provisions permitted by paragraph (b) include (for  
23 example) provisions:

24 (a) that increase the amount of paid annual leave to which an  
25 employee is entitled beyond the number of weeks applicable  
26 under section 32; or

27 (b) that allow an employee to take paid personal/carer's leave while  
28 he or she is on unpaid parental leave (despite subsection 25(2)).

29 Note 3: Provisions that would not be permitted by paragraph (a) or (b) include  
30 (for example) provisions requiring an employee to give more notice of  
31 the taking of unpaid parental leave than is required by section 20.

32 (3) A provision in a modern award that is permitted by subsection (2)  
33 does not contravene subsection (1).

34 (4) A modern award has no effect to the extent to which it contravenes  
35 this section.

Section 4

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- 1 (5) Nothing in this section affects a modern award to the extent to  
2 which it includes provisions that modern awards are expressly  
3 permitted to include:  
4 (a) by a provision of this Part; or  
5 (b) by regulations made for the purposes of paragraph 10(a).  
6 Note: In determining what is permitted to be included in a modern award by  
7 a provision mentioned in paragraph (a), any regulations made for the  
8 purpose of paragraph 10(b) must be taken into account.
- 9 (6) The National Employment Standards have effect subject to  
10 provisions included in a modern award as mentioned in  
11 subsection (5).  
12 Note: See also the note to subsection 12(6).

13 **4 Meaning of *base rate of pay***

- 14 (1) The ***base rate of pay*** of an employee, other than a pieceworker, is  
15 the rate of pay payable to the employee for his or her ordinary  
16 hours of work, but not including any of the following:  
17 (a) incentive-based payments and bonuses;  
18 (b) loadings;  
19 (c) monetary allowances;  
20 (d) overtime or penalty rates;  
21 (e) any other separately identifiable amounts.
- 22 (2) The ***base rate of pay*** of an employee who is a pieceworker is the  
23 rate of pay specified in the relevant modern award as the  
24 employee's base rate of pay for the purpose of this Part.

25 **5 Meaning of *child***

- 26 (1) A ***child*** of a person is:  
27 (a) a biological child of the person; or  
28 (b) an adopted child or step-child of the person; or  
29 (c) if, at any time, the person was in a relationship as a couple  
30 with another person (whether the persons are the same sex or  
31 different sexes)—a child who is a product of the person's  
32 relationship with that other person.  
33 It does not matter whether the child is an adult.
-

1 (2) For the purpose of paragraph (1)(c), a child cannot be the product  
 2 of a relationship between two persons (whether the persons are the  
 3 same sex or different sexes) for the purposes of this Part unless the  
 4 child is the biological child of at least one of the persons or is born  
 5 to a woman in the relationship.

6 (3) If, under this section, one person is a child of another person, other  
 7 relationships are also to be determined on the basis that the child is  
 8 a child of the other person.

9 Note: For example, for the purpose of the definition of *immediate family* in  
 10 section 1:

- 11 (a) the other person is the parent of the child; and  
 12 (b) the child is the sibling of any other child of the other person.

### 13 **6 Meaning of *full rate of pay***

14 (1) The *full rate of pay* of an employee, other than a pieceworker, is  
 15 the rate of pay payable to the employee, including all the  
 16 following:

- 17 (a) incentive-based payments and bonuses;  
 18 (b) loadings;  
 19 (c) monetary allowances;  
 20 (d) overtime or penalty rates;  
 21 (e) any other separately identifiable amounts.

22 (2) The *full rate of pay* of an employee who is a pieceworker is the  
 23 rate of pay specified in the relevant modern award as the  
 24 employee's full rate of pay for the purpose of this Part.

### 25 **7 Meaning of *service***

26 *In this Part, other than Divisions 3 and 4 and Subdivision A of*  
 27 *Division 10*

28 (1) For the purpose of this Part, other than Division 3 (requests for  
 29 flexible working arrangements), Division 4 (parental leave and  
 30 related entitlements) and Subdivision A of Division 10 (notice of  
 31 termination or payment in lieu of notice):

Section 8

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- 1 (a) a period of *service* by an employee with an employer is a  
2 period during which the employee is employed by the  
3 employer, but not including any excepted period; and  
4 (b) an excepted period does not break an employee's *continuous*  
5 *service* with an employer, but is not to be counted towards  
6 the length of the employee's continuous service.
- 7 (2) An *excepted period* is:  
8 (a) any period of unauthorised absence; or  
9 (b) any period of unpaid leave or unpaid authorised absence,  
10 other than:  
11 (i) a period of absence under Division 7 (community  
12 service leave); or  
13 (ii) a period of leave or absence of a kind prescribed by the  
14 regulations.

15 *In Divisions 3 and 4 and Subdivision A of Division 10*

- 16 (3) For the purpose of Division 3 (requests for flexible working  
17 arrangements), Division 4 (parental leave and related entitlements)  
18 and Subdivision A of Division 10 (notice of termination or  
19 payment in lieu of notice):  
20 (a) a period of *service* by an employee with an employer is a  
21 period during which the employee is employed by the  
22 employer, but not including any period of unauthorised  
23 absence; and  
24 (b) a period of unauthorised absence does not break an  
25 employee's *continuous service* with an employer, but is not  
26 to be counted towards the length of the employee's  
27 continuous service.

28 **8 Restriction on taking or accruing leave or absence while receiving**  
29 **workers' compensation**

- 30 (1) Subject to subsections (2) and (3), an employee is not entitled to  
31 take or accrue any leave or absence (whether paid or unpaid) under  
32 this Part during a period (a *compensation period*) when the  
33 employee is absent from work because of a personal illness, or a  
34 personal injury, for which the employee is receiving compensation

1 payable under a law (a *compensation law*) of the Commonwealth,  
2 or of a State or Territory, relating to workers' compensation.

3 (2) Subsection (1) does not prevent an employee from taking or  
4 accruing leave during a compensation period if the taking or  
5 accruing of the leave is permitted by a compensation law.

6 (3) Subsection (1) does not prevent an employee from taking unpaid  
7 parental leave during a compensation period.

## 8 **9 Modern awards may provide for school-based apprentices and** 9 **trainees to be paid loadings in lieu**

10 A modern award may provide for school-based apprentices or  
11 school-based trainees to be paid loadings in lieu of any of the  
12 following:

- 13 (a) paid annual leave;
- 14 (b) paid personal/carer's leave;
- 15 (c) paid absence under Division 9 (public holidays).

## 16 **10 Regulations about what modern awards can do**

17 The regulations may:

- 18 (a) permit modern awards to include provisions that would or  
19 might otherwise be contrary to this Part; or
- 20 (b) prohibit modern awards from including provisions that would  
21 or might otherwise be permitted by a provision of this Part.

## 22 **11 Relationship with other Commonwealth legislation**

23 This Part establishes minimum standards and so is intended to  
24 supplement, and not to override, entitlements under other  
25 Commonwealth legislation.

1

2 **Division 2—Maximum weekly hours**

3 **12 Maximum weekly hours**

4 *Standard hours*

- 5 (1) Subject to subsection (2), an employee's hours of work for an  
6 employer in a week must not exceed:  
7 (a) for a full-time employee—38 hours; or  
8 (b) for an employee other than a full-time employee—the lesser  
9 of:  
10 (i) 38 hours; and  
11 (ii) the employee's ordinary hours of work in a week.

12 *Reasonable additional hours*

- 13 (2) The employer may request or require the employee to work  
14 reasonable additional hours in the week.
- 15 (3) The employee may refuse to work additional hours (beyond those  
16 mentioned in subsection (1)) if they are unreasonable.
- 17 (4) In determining whether additional hours are reasonable or  
18 unreasonable for the purposes of subsections (2) and (3), the  
19 following must be considered:  
20 (a) any risk to employee health and safety from working the  
21 additional hours;  
22 (b) the employee's personal circumstances, including family  
23 responsibilities;  
24 (c) the needs of the workplace or enterprise in which the  
25 employee is employed;  
26 (d) whether the employee is entitled to receive overtime  
27 payments, penalty rates or other compensation for, or a level  
28 of remuneration that reflects an expectation of, working  
29 additional hours;  
30 (e) the notice (if any) given by the employer of any request or  
31 requirement to work the additional hours;

- 1 (f) the notice (if any) given by the employee of his or her
- 2 intention to refuse to work the additional hours;
- 3 (g) the usual patterns of work in the industry, or the part of an
- 4 industry, in which the employee works;
- 5 (h) the nature of the employee's role, and the employee's level of
- 6 responsibility;
- 7 (i) whether the additional hours are in accordance with
- 8 averaging provisions included a modern award;
- 9 (j) any other relevant matter.

10 *Authorised leave treated as hours worked*

- 11 (5) For the purposes of subsection (1), the hours an employee works in
- 12 a week are taken to include any hours of authorised leave the
- 13 employee takes in the week. **Authorised leave** is the employee's
- 14 leave, or absence, whether paid or unpaid, that is authorised:
- 15 (a) by the employee's employer; or
- 16 (b) by or under a term or condition of the employee's
- 17 employment; or
- 18 (c) by or under a law of the Commonwealth, or of a State or a
- 19 Territory, or an instrument in force under such a law.

20 *Modern awards may provide for averaging of hours of work*

- 21 (6) A modern award may include provisions for the averaging of hours
- 22 of work over a specified period. The average weekly hours over the
- 23 period must not exceed:
- 24 (a) for a full-time employee—38 hours; or
- 25 (b) for an employee other than a full-time employee—the lesser
- 26 of:
- 27 (i) 38 hours; and
- 28 (ii) the employee's ordinary hours of work in a week.

29 Note: Hours in excess of the hours referred to in paragraph (6)(a) or (b) that  
30 are worked in a week in accordance with averaging provisions in a  
31 modern award will be treated as additional hours for the purpose of  
32 this section, but the averaging provisions will be relevant in  
33 determining whether the additional hours are reasonable (see  
34 paragraph (4)(i)).

1

2 **Division 3—Requests for flexible working arrangements**

3 **13 Requests for flexible working arrangements**

4 (1) An employee who is a parent, or has a responsibility for the care,  
5 of a child under school age may request the employer for a change  
6 in working arrangements for the purpose of assisting the employee  
7 to care for the child.

8 Note: Examples of changes in working arrangements include changes in  
9 hours of work, changes in patterns of work and changes in location of  
10 work.

11 (2) The employee is not entitled to make the request unless:

12 (a) for an employee other than a casual employee—the employee  
13 has completed at least 12 months of continuous service with  
14 the employer immediately before making the request; or

15 (b) for a casual employee—the employee:

16 (i) has been engaged by the employer on a regular and  
17 systematic basis for a sequence of periods of  
18 employment during a period of at least 12 months  
19 immediately before making the request; and

20 (ii) has a reasonable expectation of continuing engagement  
21 by the employer on a regular and systematic basis.

22 (3) The request must:

23 (a) be in writing; and

24 (b) set out details of the change sought and reasons for the  
25 change.

26 (4) The employer must give the employee a written response to the  
27 request within 21 days, stating whether the employer grants or  
28 refuses the request.

29 (5) The employer may refuse the request only on reasonable business  
30 grounds.

31 (6) If the employer refuses the request, the written response under  
32 subsection (4) must include the reasons for the refusal.

1

2 **Division 4—Parental leave and related entitlements**3 **Subdivision A—General**4 **14 General rule—employee must have completed at least 12 months**  
5 **of service**6 *Employees other than casual employees*

- 7 (1) An employee, other than a casual employee, is not entitled to leave  
8 under this Division (other than unpaid pre-adoption leave) unless  
9 the employee has, or will have, completed at least 12 months of  
10 continuous service with the employer immediately before:
- 11 (a) if the leave is birth-related leave—the date of birth, or the  
12 expected date of birth, of the child; or
  - 13 (b) if the leave is adoption-related leave—the day of placement,  
14 or the expected day of placement, of the child.

15 *Casual employees*

- 16 (2) A casual employee is not entitled to leave (other than unpaid  
17 pre-adoption leave) under this Division unless:
- 18 (a) the employee has, or will have, been engaged by the  
19 employer on a regular and systematic basis for a sequence of  
20 periods of employment during a period of at least 12 months  
21 immediately before:
    - 22 (i) if the leave is birth-related leave—the date of birth, or  
23 the expected date of birth, of the child; or
    - 24 (ii) if the leave is adoption-related leave—the day of  
25 placement, or the expected day of placement, of the  
26 child; and
  - 27 (b) but for the birth or expected birth of the child, or the  
28 placement or the expected placement of the child, the  
29 employee would have a reasonable expectation of continuing  
30 engagement by the employer on a regular and systematic  
31 basis.



- 1 (3) Despite the definition of *child* in section 5, an employee is not  
2 entitled to unpaid parental leave in relation to a child if the child is  
3 not:  
4 (a) born to the employee or the employee's spouse or de facto  
5 partner (within the meaning of subsection (2) of this section);  
6 or  
7 (b) placed with the employee for adoption.

8 **17 The period of leave: other than for members of an employee**  
9 **couple who each intend to take leave**

10 *When this section applies*

- 11 (1) This section applies to an employee who intends to take unpaid  
12 parental leave if:  
13 (a) the employee is not a member of an employee couple; or  
14 (b) the employee is a member of an employee couple, but the  
15 other member of the couple does not intend to take unpaid  
16 parental leave.

17 *Leave must be taken in single continuous period*

- 18 (2) The employee must take the leave in a single continuous period.

19 Note: An employee may take a form of paid leave at the same time as he or  
20 she is on unpaid parental leave: see section 25.

21 *When birth-related leave must start*

- 22 (3) If the leave is birth-related leave for a female employee who is  
23 pregnant with, or gives birth to, the child, the period of leave may  
24 start up to 6 weeks before the expected date of birth of the child,  
25 but must not start later than the date of birth of the child.  
26 (4) If subsection (3) does not apply, the period of leave must start on  
27 the date of birth of the child.

28 *When adoption-related leave must start*

- 29 (5) If the leave is adoption-related leave, the period of leave must start  
30 on the day of placement of the child.

Section 18

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1 **18 The period of leave: members of an employee couple who each**  
2 **intend to take leave**

3 *When this section applies*

- 4 (1) This section applies to an employee couple if each of the  
5 employees intends to take unpaid parental leave.

6 *Leave must be taken in single continuous period*

- 7 (2) Each employee must take the leave in a single continuous period.

8 Note: An employee may take a form of paid leave at the same time as he or  
9 she is on unpaid parental leave: see section 25.

10 *When birth-related leave must start*

- 11 (3) If the leave is birth-related leave:

12 (a) one employee's period of leave must start first, in accordance  
13 with the following rules:

14 (i) if the member of the employee couple whose period of  
15 leave starts first is a female employee who is pregnant  
16 with, or gives birth to, the child—the period of leave  
17 may start up to 6 weeks before the expected date of  
18 birth of the child, but must not start later than the date of  
19 birth of the child;

20 (ii) if subparagraph (i) does not apply—the period of leave  
21 must start on the date of birth of the child; and

22 (b) the other employee's period of leave must start immediately  
23 after the end of the first employee's period of leave (or that  
24 period as extended under section 21 or 22).

25 *When adoption-related leave must start*

- 26 (4) If the leave is adoption-related leave:

27 (a) one employee's period of leave must start on the day of  
28 placement of the child; and

29 (b) the other employee's period of leave must start immediately  
30 after the end of the first employee's period of leave (or that  
31 period as extended under section 21 or 22).

*Limited right to take concurrent leave*

(5) If one of the employees takes a period (the *first employee's period of leave*) of unpaid parental leave in accordance with paragraph (3)(a) or (4)(a), the other employee may take a period of unpaid parental leave (the *concurrent leave*) during the first employee's period of leave, if the concurrent leave complies with the following requirements:

(a) the concurrent leave must be for a period of 3 weeks or less;

(b) subject to paragraph (c), the concurrent leave must not start before, and must not end more than 3 weeks after:

(i) if the leave is birth-related leave—the date of birth of the child; or

(ii) if the leave is adoption-related leave—the day of placement of the child;

(c) if the employer agrees, the concurrent leave may (subject to paragraph (a)):

(i) start earlier than is permitted by paragraph (b); or

(ii) end up to 3 weeks later than is permitted by paragraph (b).

(6) Concurrent leave taken by an employee:

(a) is an exception to the rule that the employee must take his or her leave in a single continuous period (see subsection (2)); and

(b) is an exception to the rules about when the employee's period of unpaid parental leave must start (see subsection (3) or (4)).

Note: The concurrent leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 16.

## **19 Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth**

(1) If a pregnant employee who is entitled to parental leave (whether or not she has complied with section 20) continues to work during the period of 6 weeks before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate containing the following statements (as applicable):

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### Section 19

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- 1 (a) a statement of whether the employee is fit to work;
- 2 (b) if the employee is fit to work—a statement of whether it is
- 3 inadvisable for the employee to continue in her present
- 4 position during a stated period because of:
- 5 (i) illness, or risks, arising out of the employee’s
- 6 pregnancy; or
- 7 (ii) hazards connected with the position.
- 8 Note: Personal information given to an employer under this subsection may
- 9 be regulated under the *Privacy Act 1988*.
- 10 (2) Subject to subsection (3), the employer may require the employee
- 11 to take a period of unpaid parental leave (the *period of leave*) as
- 12 soon as reasonably practicable if:
- 13 (a) the employee does not give the employer the requested
- 14 certificate within 7 days after the request; or
- 15 (b) within 7 days after the request, the employee gives the
- 16 employer a medical certificate stating that the employee is
- 17 not fit for work; or
- 18 (c) the following subparagraphs are satisfied:
- 19 (i) within 7 days after the request, the employee gives the
- 20 employer a medical certificate stating that the employee
- 21 is fit for work, but that it is inadvisable for the employee
- 22 to continue in her present position for stated period for a
- 23 reason mentioned in subparagraph (1)(b)(i) or (ii);
- 24 (ii) section 27 does not apply to the employee.
- 25 Note: If the medical certificate contains a statement as mentioned in
- 26 subparagraph (c)(i) and section 27 applies to the employee, the
- 27 employee is entitled under that section to be transferred to a safe job,
- 28 or to paid no safe job leave.
- 29 (3) The period of leave must not end later than the earlier of the
- 30 following:
- 31 (a) the end of the pregnancy;
- 32 (b) if the employee has given the employer notice of the taking
- 33 of a period of leave connected with the birth of the child
- 34 (whether it is unpaid parental leave or some other kind of
- 35 leave)—the start date of that leave.
- 36 (4) The period of leave:

- 1 (a) is an exception to the rule that the employee must take her  
 2 unpaid parental leave in a single continuous period (see  
 3 subsection 17(2) or 18(2)); and  
 4 (b) is an exception to the rules about when the employee's period  
 5 of unpaid parental leave must start (see subsection 17(3) or  
 6 18(3)).
- 7 Note: The period of leave is unpaid parental leave and so comes out of the  
 8 employee's entitlement to 12 months of unpaid parental leave under  
 9 section 16.
- 10 (5) The employee is not required to comply with section 20 in relation  
 11 to the period of leave.

## 12 **20 Notice and evidence requirements**

### 13 *Notice*

- 14 (1) An employee must give his or her employer written notice of the  
 15 taking of unpaid parental leave under section 17 or 18 by the  
 16 employee.
- 17 (2) The notice must be given to the employer:  
 18 (a) at least 10 weeks before starting the leave; or  
 19 (b) if that is not reasonably practicable—as soon as is reasonably  
 20 practicable (which may be a time after the leave has started).
- 21 (3) The notice must specify the intended start and end dates of the  
 22 leave.

### 23 *Evidence*

- 24 (4) An employee who has given his or her employer notice of the  
 25 taking of unpaid parental leave must, if required by the employer,  
 26 give the employer evidence that would satisfy a reasonable person:  
 27 (a) if the leave is birth-related leave—of the date of birth, or the  
 28 expected date of birth, of the child; or  
 29 (b) if the leave is adoption-related leave:  
 30 (i) of the day of placement, or the expected day of  
 31 placement, of the child; and

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**Section 21**

---

1 (ii) that the child is, or will be, under school age as at the  
2 day of placement, or the expected day of placement, of  
3 the child.

4 (5) Without limiting the generality of subsection (4), an employer may  
5 require the evidence referred to in paragraph (4)(a) to be a medical  
6 certificate.

7 *Compliance*

8 (6) An employee is not entitled to take unpaid parental leave under  
9 section 17 or 18 unless the employee complies with this section.

10 Note: Personal information given to an employer under this section may be  
11 regulated under the *Privacy Act 1988*.

12 **21 Extending period of unpaid parental leave: extending to use more**  
13 **of available parental leave period**

14 *When this section applies*

15 (1) This section applies if:

- 16 (a) an employee has, in accordance with section 20, given notice  
17 of the taking of unpaid parental leave; and  
18 (b) the period specified in the notice (the *original leave period*)  
19 is less than the employee's available parental leave period.

20 (2) The employee's *available parental leave period* is 12 months, less  
21 any periods of the following kinds:

- 22 (a) a period of concurrent leave that the employee has taken in  
23 accordance with subsection 18(5);  
24 (b) a period of unpaid parental leave that the employee has been  
25 required to take under subsection 19(2);  
26 (c) a period by which the employee's entitlement to unpaid  
27 parental leave is reduced under paragraph 22(4)(c);  
28 (d) a period of special maternity leave that the employee has  
29 taken.

1                    *First extension by giving notice to employer*

- 2                    (3) The employee may extend the period of unpaid parental leave by  
3                    giving his or her employer written notice of the extension not later  
4                    than 4 weeks before the end date of the original leave period. The  
5                    notice must specify the new end date for the leave.
- 6                    (4) Only one extension is permitted under subsection (3).

7                    *Subsequent extensions by agreement with employer*

- 8                    (5) If the employer agrees, the employee may further extend the period  
9                    of unpaid parental leave one or more times.

10                   *No entitlement to extension beyond available parental leave period*

- 11                   (6) Nothing in this section entitles the employee to extend the period  
12                   of unpaid parental leave beyond the employee's available parental  
13                   leave period.

14                   **22 Extending period of unpaid parental leave: extending for up to 12**  
15                   **months beyond available parental leave period**

16                   *Employee may request further period of leave*

- 17                   (1) An employee who takes unpaid parental leave for his or her  
18                   available parental leave period may request his or her employer to  
19                   agree to an extension of unpaid parental leave for the employee for  
20                   a further period of up to 12 months immediately following the end  
21                   of the available parental leave period.

22                   *Making the request*

- 23                   (2) The request must be in writing, and must be given to the employer  
24                   at least 4 weeks before the end of the available parental leave  
25                   period.

26                   *Agreeing to the requested extension*

- 27                   (3) The employer must agree to the requested extension, unless the  
28                   employer has reasonable business grounds for refusing.

Section 23

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1                    *Special rules for employee couples*

- 2                    (4) The following paragraphs apply in relation to a member of an  
3                    employee couple extending a period of unpaid parental leave in  
4                    respect of a child under this section:
- 5                    (a) the request must specify the amount (if any) of unpaid  
6                    parental leave and unpaid special maternity leave that the  
7                    other member of the employee couple has taken, or will have  
8                    taken, in relation to the child before the extension starts;
- 9                    (b) the period of the extension cannot exceed 12 months, less  
10                   any period of unpaid parental leave or unpaid special  
11                   maternity leave that the other member of the employee  
12                   couple has taken, or will have taken, in relation to the child  
13                   before the extension starts;
- 14                   (c) the amount of unpaid parental leave to which the other  
15                   member of the employee couple is entitled under section 16  
16                   in respect of the child is reduced by the period of the  
17                   extension.

18                   **23 Reducing period of unpaid parental leave**

19                                      If the employer agrees, an employee may reduce the period of  
20                                      unpaid parental leave he or she takes.

21                   **24 Employee who ceases to have responsibility for care of child**

- 22                   (1) This section applies to an employee who has taken unpaid parental  
23                   leave in respect of a child if the employee ceases to have any  
24                   responsibility for the care of the child.
- 25                   (2) The employer may give the employee written notice requiring the  
26                   employee to return to work on a specified day.
- 27                   (3) The specified day:
- 28                                      (a) must be at least 4 weeks after the notice is given to the  
29                                      employee; and
- 30                                      (b) if the leave is birth-related leave taken by a female employee  
31                                      who has given birth—must not be earlier than 6 weeks after  
32                                      the date of birth of the child.

- 1 (4) The employee's entitlement to unpaid parental leave in respect of  
2 the child ends immediately before the specified day.

### 3 **25 Interaction with paid leave**

- 4 (1) Subject to subsections (2) and (3), nothing in this Subdivision  
5 prevents an employee from taking any other kind of paid leave  
6 while he or she is taking unpaid parental leave. If the employee  
7 does so, the taking of that other paid leave does not break the  
8 continuity of the period of unpaid parental leave.

9 Note: For example, if the employee has paid annual leave available, he or  
10 she may (with the employer's agreement) take some or all of that paid  
11 annual leave at the same time as the unpaid parental leave.

- 12 (2) An employee is not entitled to take paid personal/carer's leave or  
13 compassionate leave while he or she is taking unpaid parental  
14 leave.

- 15 (3) An employee is not entitled to any payment under Division 7  
16 (community service leave) in relation to activities the employee  
17 engages in while taking unpaid parental leave.

### 18 **Subdivision C—Other entitlements**

#### 19 **26 Unpaid special maternity leave**

##### 20 *Entitlement to unpaid special maternity leave*

- 21 (1) A female employee is entitled to a period of unpaid special  
22 maternity leave if she is unfit for work during that period because:  
23 (a) she has a pregnancy-related illness; or  
24 (b) she has been pregnant, and the pregnancy ends within 28  
25 weeks of the expected date of birth of the child otherwise  
26 than by the birth of a living child.

27 Note: Entitlement is also affected by section 14.

##### 28 *Notice and evidence*

- 29 (2) An employee must give her employer notice of the taking of  
30 unpaid special maternity leave by the employee.

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**Section 27**

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- 1           (3) The notice:  
2               (a) must be given to the employer as soon as reasonably  
3               practicable (which may be a time after the leave has started);  
4               and  
5               (b) must advise the employer of the period, or expected period,  
6               of the leave.
- 7           (4) An employee who has given her employer notice of the taking of  
8           unpaid special maternity leave must, if required by the employer,  
9           give the employer evidence that would satisfy a reasonable person  
10           that the leave is taken for a reason specified in subsection (1).
- 11           (5) Without limiting the generality of subsection (4), an employer may  
12           require the evidence referred to in that subsection to be a medical  
13           certificate.
- 14           (6) An employee is not entitled to take unpaid special maternity leave  
15           unless the employee complies with subsections (2) to (4).
- 16                   *Taking of special maternity leave reduces entitlement to unpaid*  
17                   *parental leave*
- 18           (7) A female employee's entitlement to 12 months unpaid parental  
19           leave associated with the birth of a child (see section 16) is reduced  
20           by the amount of any unpaid special maternity leave taken by the  
21           employee while she was pregnant.
- 22           Note:        Personal information given to an employer under this section may be  
23                        regulated under the *Privacy Act 1988*.

24   **27 Transfer to a safe job**

- 25           (1) This section applies to a female employee who is pregnant if:  
26               (a) she is entitled to unpaid parental leave; and  
27               (b) she has already complied with the notice and evidence  
28               requirements of section 20 for taking unpaid parental leave;  
29               and  
30               (c) she gives her employer evidence that would satisfy a  
31               reasonable person that she is fit to work, but that it is  
32               inadvisable for her to continue in her present position during  
33               a stated period (the *risk period*) because of:

- 1 (i) illness, or risks, arising out of her pregnancy; or  
 2 (ii) hazards connected with that position.
- 3 Note: Personal information given to an employer under this subsection may  
 4 be regulated under the *Privacy Act 1988*.
- 5 (2) Without limiting the generality of paragraph (1)(c), an employer  
 6 may require the evidence referred to in that paragraph to be a  
 7 medical certificate.
- 8 (3) If this section applies to an employee:  
 9 (a) if there is an appropriate safe job available—the employer  
 10 must transfer the employee to that job for the risk period,  
 11 with no other change to the employee’s terms and conditions  
 12 of employment; or  
 13 (b) if there is no appropriate safe job available—the employee is  
 14 entitled to take paid no safe job leave for the risk period.
- 15 (4) An ***appropriate safe job*** is a safe job that has:  
 16 (a) the same ordinary hours of work as the employee’s present  
 17 position; or  
 18 (b) a different number of ordinary hours agreed to by the  
 19 employee.
- 20 (5) Without limiting paragraph (3)(a), if the employee is transferred to  
 21 an appropriate safe job for the risk period, the employer must pay  
 22 the employee for the safe job at the employee’s full rate of pay (for  
 23 the position she was in before the transfer) for the hours that she  
 24 works in the risk period.
- 25 (6) If the employee takes paid no safe job leave for the risk period, the  
 26 employer must pay the employee at the employee’s base rate of  
 27 pay for the employee’s ordinary hours of work in the risk period.
- 28 (7) If the employee’s pregnancy ends before the end of the risk period,  
 29 the risk period ends when the pregnancy ends.

30 **28 Consultation with employee on unpaid parental leave**

- 31 (1) If:  
 32 (a) an employee is on unpaid parental leave; and

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- 1 (b) the employee’s employer makes a decision that will have a  
2 significant effect on the status, pay or location of the  
3 employee’s pre-parental leave position;  
4 the employer must take all reasonable steps to give the employee  
5 information about, and an opportunity to discuss, the effect of the  
6 decision on that position.
- 7 (2) The employee’s *pre-parental leave position* is:  
8 (a) unless paragraph (b) applies, the position the employee held  
9 before starting the unpaid parental leave; or  
10 (b) if, before starting the unpaid parental leave, the employee:  
11 (i) was transferred to a safe job because of her pregnancy;  
12 or  
13 (ii) reduced her working hours due to her pregnancy;  
14 the position the employee held immediately before that  
15 transfer or reduction.

16 **29 Return to work guarantee**

- 17 On finishing unpaid parental leave, an employee is entitled to  
18 return to:  
19 (a) the employee’s pre-parental leave position; or  
20 (b) if that position no longer exists—an available position for  
21 which the employee is qualified and suited nearest in status  
22 and pay to the pre-parental leave position.

23 **30 Unpaid pre-adoption leave**

24 *Entitlement to unpaid pre-adoption leave*

- 25 (1) Subject to subsection (2), an employee is entitled to up to 2 days of  
26 unpaid pre-adoption leave to attend any interviews or examinations  
27 required in order to obtain approval for the employee’s adoption of  
28 a child.

29 Note: Entitlement is also affected by sections 14 and 15.

- 30 (2) An employee is not entitled to take a period of unpaid pre-adoption  
31 leave if:

- 1 (a) the employee could instead take some other form of leave;  
2 and  
3 (b) the employer would prefer the employee to take that other  
4 form of leave.
- 5 (3) An employee who is entitled to a period of unpaid pre-adoption  
6 leave is entitled to take the leave as:  
7 (a) a single continuous period of up to 2 days; or  
8 (b) any separate periods to which the employee and the employer  
9 agree.
- 10 *Notice and evidence*
- 11 (4) An employee must give his or her employer notice of the taking of  
12 unpaid pre-adoption leave by the employee.
- 13 (5) The notice:  
14 (a) must be given to the employer as soon as reasonably  
15 practicable (which may be a time after the leave has started);  
16 and  
17 (b) must advise the employer of the period, or expected period,  
18 of the leave.
- 19 (6) An employee who has given his or her employer notice of the  
20 taking of unpaid pre-adoption leave must, if required by the  
21 employer, give the employer evidence that would satisfy a  
22 reasonable person that the leave is taken to attend an interview or  
23 examination as mentioned in subsection (1).
- 24 (7) An employee is not entitled to take unpaid pre-adoption leave  
25 unless the employee complies with subsections (4) to (6).
- 26 Note: Personal information given to an employer under this section may be  
27 regulated under the *Privacy Act 1988*.

1

2 **Division 5—Annual leave**

3 **31 Division applies to employees other than casual employees**

4 This Division applies to employees, other than casual employees.

5 **32 Entitlement to annual leave**

- 6 (1) Subject to subsection (2), for each year of service with his or her  
7 employer, an employee is entitled to:  
8 (a) 4 weeks of paid annual leave; or  
9 (b) if a modern award that applies to the employee's  
10 employment defines or describes the employee as a  
11 shiftworker for the purpose of this Division—5 weeks of paid  
12 annual leave.

- 13 (2) An employee's entitlement to paid annual leave accrues  
14 progressively during a year of service according to the employee's  
15 ordinary hours of work.

16 Note: If an employee's employment ends during what would otherwise have  
17 been a year of service, the employee accrues paid annual leave up to  
18 the time when the employment ends.

19 **33 Taking paid annual leave**

- 20 (1) Paid annual leave may be taken for a period agreed between an  
21 employee and his or her employer.  
22 (2) The employer must not unreasonably refuse to agree to a request  
23 by the employee to take paid annual leave.

24 **34 Employee not taken to be on paid annual leave at certain times**

- 25 (1) If the period during which an employee takes paid annual leave  
26 includes a day or part-day that is a public holiday in the place  
27 where the employee is based for work purposes, the employee is  
28 taken not to be on paid annual leave on that public holiday.

- 1           (2) If the period during which an employee takes paid annual leave  
2           includes a period of any other leave (other than unpaid parental  
3           leave) under this Part, or a period of absence from employment  
4           under Division 7 (community service leave), the employee is taken  
5           not to be on paid annual leave for the period of that other leave or  
6           absence.

### 7   **35 Payment for annual leave**

- 8           (1) If, in accordance with this Division, an employee takes a period of  
9           paid annual leave, the employer must pay the employee at the  
10          employee's base rate of pay for the employee's ordinary hours of  
11          work in the period.
- 12          (2) If, when the employment of an employee ends, the employee has a  
13          period of untaken paid annual leave, the employer must pay the  
14          employee the amount that would have been payable to the  
15          employee under subsection (1) if the employee had taken that  
16          period of annual leave.

### 17   **36 Modern awards may include certain kinds of provisions**

- 18          (1) A modern award may include provisions of any of the following  
19          kinds:  
20               (a) provisions for the cashing out of paid annual leave;  
21               (b) provisions requiring an employee (or allowing for an  
22               employee to be required) to take paid annual leave in  
23               particular circumstances;  
24               (c) provisions otherwise dealing with the taking of paid annual  
25               leave.
- 26          (2) Provisions in a modern award for the cashing out of paid annual  
27          leave must:  
28               (a) prohibit the employer from exerting undue influence or  
29               undue pressure on the employee to cash out the employee's  
30               leave; and  
31               (b) provide that the employee must be paid the full amount that  
32               would have been payable to the employee had the employee  
33               taken the leave that the employee has forgone.

1

2 **Division 6—Personal/carer's leave and compassionate**  
3 **leave**

4 **Subdivision A—Paid personal/carer's leave**

5 **37 Subdivision applies to employees other than casual employees**

6 This Subdivision applies to employees, other than casual  
7 employees.

8 **38 Entitlement to paid personal/carer's leave**

9 (1) Subject to subsection (2), for each year of service with his or her  
10 employer, an employee is entitled to 10 days of paid  
11 personal/carer's leave.

12 (2) An employee's entitlement to paid personal/carer's leave accrues  
13 progressively during a year of service according to the employee's  
14 ordinary hours of work.

15 **39 Taking paid personal/carer's leave**

16 An employee may take paid personal/carer's leave if the leave is  
17 taken:

- 18 (a) because the employee is unfit for work because of a personal  
19 illness, or personal injury, affecting the employee; or  
20 (b) to provide care or support to a member of the employee's  
21 immediate family, or a member of the employee's household,  
22 who requires care or support because of:  
23 (i) a personal illness, or personal injury, affecting the  
24 member; or  
25 (ii) an unexpected emergency affecting the member.

26 Note: The notice and evidence requirements of section 48 must be complied  
27 with.

1 **40 Employee taken not to be on paid personal/carer's leave on**  
2 **public holiday**

3 If the period during which an employee takes paid personal/carer's  
4 leave includes a day or part-day that is a public holiday in the place  
5 where the employee is based for work purposes, the employee is  
6 taken not to be on paid personal/carer's leave on that public  
7 holiday.

8 **41 Payment for paid personal/carer's leave**

9 If, in accordance with this Subdivision, an employee takes a period  
10 of paid personal/carer's leave, the employer must pay the employee  
11 at the employee's base rate of pay for the employee's ordinary  
12 hours of work in the period.

13 **42 Modern awards may include provisions dealing with cashing out**  
14 **of paid personal/carer's leave**

- 15 (1) A modern award may include provisions for the cashing out of  
16 paid personal/carer's leave.
- 17 (2) Provisions in a modern award for the cashing out of paid  
18 personal/carer's leave must:
- 19 (a) prohibit the employer from exerting undue influence or  
20 undue pressure on the employee to cash out the employee's  
21 leave; and
- 22 (b) provide that the employee must be paid the full amount that  
23 would have been payable to the employee had the employee  
24 taken the leave that the employee has forgone.

25 **Subdivision B—Unpaid carer's leave**

26 **43 Entitlement to unpaid carer's leave**

27 An employee is entitled to 2 days of unpaid carer's leave for each  
28 occasion (a *permissible occasion*) when a member of the  
29 employee's immediate family, or a member of the employee's  
30 household, requires care or support because of:

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---

- 1 (a) a personal illness, or personal injury, affecting the member;  
2 or  
3 (b) an unexpected emergency affecting the member.

4 **44 Taking unpaid carer's leave**

- 5 (1) Subject to subsection (3), an employee may take unpaid carer's  
6 leave for a particular permissible occasion if the leave is taken to  
7 provide care or support as mentioned in section 43.
- 8 (2) An employee may take unpaid carer's leave for a particular  
9 permissible occasion as:  
10 (a) a single continuous period of up to 2 days; or  
11 (b) any separate periods to which the employee and his or her  
12 employer agree.
- 13 (3) An employee cannot take unpaid carer's leave during a particular  
14 period if the employee could instead take paid personal/carer's  
15 leave.
- 16 Note: The notice and evidence requirements of section 48 must be complied  
17 with.

18 **Subdivision C—Compassionate leave**

19 **45 Entitlement to compassionate leave**

- 20 An employee is entitled to 2 days of compassionate leave for each  
21 occasion (a *permissible occasion*) when a member of the  
22 employee's immediate family, or a member of the employee's  
23 household:  
24 (a) contracts or develops a personal illness that poses a serious  
25 threat to his or her life; or  
26 (b) sustains a personal injury that poses a serious threat to his or  
27 her life; or  
28 (c) dies.

29 **46 Taking compassionate leave**

- 30 (1) An employee may take compassionate leave for a particular  
31 permissible occasion if the leave is taken:
-

- 1 (a) for the purpose of spending time with the member of the  
2 employee's immediate family or household who has  
3 contracted or developed the personal illness, or sustained the  
4 personal injury, referred to in section 45; or  
5 (b) after the death of the member of the employee's immediate  
6 family or household referred to in section 45.
- 7 (2) An employee may take compassionate leave for a particular  
8 permissible occasion as:  
9 (a) a single continuous period of 2 days; or  
10 (b) 2 separate periods of 1 day each; or  
11 (c) any separate periods to which the employee and his or her  
12 employer agree.
- 13 (3) If the permissible occasion is the contraction or development of a  
14 personal illness, or the sustaining of a personal injury, the  
15 employee may take the compassionate leave for that occasion at  
16 any time while the illness or injury persists.
- 17 Note: The notice and evidence requirements of section 48 must be complied  
18 with.

19 **47 Payment for compassionate leave (other than for casual**  
20 **employees)**

21 If, in accordance with this Subdivision, an employee, other than a  
22 casual employee, takes a period of compassionate leave, the  
23 employer must pay the employee at the employee's base rate of  
24 pay for the employee's ordinary hours of work in the period.

25 Note: For casual employees, compassionate leave is unpaid leave.

26 **Subdivision D—Notice and evidence requirements**

27 **48 Notice and evidence requirements**

28 *Notice*

- 29 (1) An employee must give his or her employer notice of the taking of  
30 leave under this Division by the employee.
- 31 (2) The notice:
-

## Division 6 Personal/carer's leave and compassionate leave

### Section 48

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- 1 (a) must be given to the employer as soon as is reasonably  
2 practicable (which may be a time after the leave has started);  
3 and  
4 (b) must advise the employer of the period, or expected period,  
5 of the leave.

#### 6 *Evidence*

- 7 (3) An employee who has given his or her employer notice of the  
8 taking of leave under this Division must, if required by the  
9 employer, give the employer evidence that would satisfy a  
10 reasonable person that:  
11 (a) if it is paid personal/carer's leave—the leave is taken for a  
12 reason specified in section 39; or  
13 (b) if it is unpaid carer's leave—the leave is taken for a  
14 permissible occasion in circumstances specified in subsection  
15 44(1); or  
16 (c) if it is compassionate leave—the leave is taken for a  
17 permissible occasion in circumstances specified in subsection  
18 46(1).

#### 19 *Compliance*

- 20 (4) An employee is not entitled to take leave under this Division unless  
21 the employee complies with this section.

#### 22 *Modern awards may include evidence requirements*

- 23 (5) A modern award may include provisions in relation to the kind of  
24 evidence that an employee must provide in order to be entitled to  
25 paid personal/carer's leave, unpaid carer's leave or compassionate  
26 leave.

27 Note: Personal information given to an employer under this section may be  
28 regulated under the *Privacy Act 1988*.

1

**2 Division 7—Community service leave****3 49 Meaning of *eligible community service activity***

4

(1) Each of the following is an *eligible community service activity*:

5

(a) jury service (including attendance for the purpose of jury selection) that is required by or under a law of the Commonwealth or of a State or Territory; or

6

7

8

(b) carrying out a voluntary emergency management activity (within the meaning of section 659); or

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10

11

(c) an activity prescribed in regulations made for the purpose of subsection (2).

12

13

14

(2) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity for the purpose of this Division.

15

16

**50 Entitlement to be absent from employment for engaging in eligible community service activity**

17

18

19

An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

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(a) the period consists of one or more of the following:

(i) time when the employee engages in the activity;

(ii) reasonable travelling time associated with the activity;

(iii) reasonable rest time immediately following the activity;

and

(b) unless the activity is jury service—the employee’s absence is reasonable in all the circumstances.

Section 51

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1 **51 Notice and evidence requirements**

2 *Notice*

3 (1) An employee who wants an absence from his or her employment to  
4 be covered by this Division must give his or her employer notice of  
5 the absence.

6 (2) The notice:

7 (a) must be given to the employer as soon as reasonably  
8 practicable (which may be a time after the absence has  
9 started); and

10 (b) must advise the employer of the period, or expected period,  
11 of the absence.

12 *Evidence*

13 (3) An employee who has given his or her employer notice of an  
14 absence under subsection (1) must, if required by the employer,  
15 give the employer evidence that would satisfy a reasonable person  
16 that the absence is because the employee has been or will be  
17 engaging in an eligible community service activity.

18 *Compliance*

19 (4) An employee's absence from his or her employment is not covered  
20 by this Division unless the employee complies with this section.

21 Note: Personal information given to an employer under this section may be  
22 regulated under the *Privacy Act 1988*.

23 **52 Payment to employees (other than casuals) on jury service**

24 (1) This section applies if:

25 (a) in accordance with this Division, an employee is absent from  
26 his or her employment for a period because of jury service;  
27 and

28 (b) the employee is not a casual employee.

29 (2) Subject to subsections (3), (4) and (5), the employer must pay the  
30 employee at the employee's base rate of pay for the employee's  
31 ordinary hours of work in the period.

- 1 (3) The employer may require the employee to give the employer  
2 evidence that would satisfy a reasonable person:
- 3 (a) that the employee has taken all necessary steps to obtain any  
4 amount of jury service pay to which the employee is entitled;  
5 and  
6 (b) of the total amount (even if it is a nil amount) of jury service  
7 pay that has been paid, or is payable, to the employee for the  
8 period.
- 9 Note: Personal information given to an employer under this subsection may  
10 be regulated under the *Privacy Act 1988*.
- 11 (4) If, in accordance with subsection (3), the employer requires the  
12 employee to give the employer the evidence referred to in that  
13 subsection:
- 14 (a) the employee is not entitled to payment under subsection (2)  
15 unless the employee provides the evidence; and  
16 (b) if the employee provides the evidence—the amount payable  
17 to the employee under subsection (2) is reduced by the total  
18 amount of jury service pay that has been paid, or is payable,  
19 to the employee, as disclosed in the evidence.
- 20 (5) If an employee is absent because of jury service in relation to a  
21 particular jury service summons for a period, or a number of  
22 periods, of more than 10 days in total:
- 23 (a) the employer is only required to pay the employee for the  
24 first 10 days of absence; and  
25 (b) the evidence provided in response to a requirement under  
26 subsection (3) need only relate to the first 10 days of  
27 absence; and  
28 (c) the reference in subsection (4) to the total amount of jury  
29 service pay as disclosed in evidence is a reference to the total  
30 amount so disclosed for the first 10 days of absence.

1

2 **Division 8—Long service leave**

3 **53 Entitlement to long service leave**

4

(1) An employee is entitled to long service leave in accordance with applicable award-derived long service leave provisions (see subsection (2)) unless:

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7

(a) a workplace agreement, or an AWA (within the meaning of Schedule 7A), that came into force before the commencement of this Part applies to the employee's employment; or

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11

(b) one of the following kinds of instrument that came into force before the commencement of this Part applies to the employee's employment and expressly deals with long service leave:

12

13

14

15

(i) a preserved State agreement;

16

(ii) a workplace determination;

17

(iii) a pre-reform certified agreement (within the meaning of Schedule 7);

18

19

(iv) a pre-reform AWA;

20

(v) a section 170MX award (within the meaning of Schedule 7);

21

22

(vi) an old IR agreement (within the meaning of Schedule 7);

23

24

(vii) an employment agreement (within the meaning of section 887).

25

26

Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (1)(a) or (b) that applies to the employee's employment, the employee will, at that time, become entitled to long service leave in accordance with applicable award-derived long service leave provisions.

27

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(2) ***Applicable award-derived long service leave provisions***, in relation to an employee, are provisions of an award, or of a notional agreement preserving State awards:

32

33

34

(a) that would have applied to the employee's employment immediately before the commencement of this Part if:

35

- 1 (i) the employee had, at that time, been in his or her current
- 2 circumstances of employment; and
- 3 (ii) no workplace agreement, AWA (within the meaning of
- 4 Schedule 7A) or workplace determination, had (whether
- 5 at that time or earlier) applied to the employee's
- 6 employment; and
- 7 (b) that would have entitled the employee to long service leave
- 8 (or that relate to matters that are ancillary or incidental to
- 9 such an entitlement).

1

2 **Division 9—Public holidays**

3 **54 Meaning of *public holiday***

4

(1) The following are ***public holidays***:

5

(a) each of these days:

6

(i) 1 January (New Year's Day);

7

(ii) 26 January (Australia Day);

8

(iii) Good Friday;

9

(iv) Easter Monday;

10

(v) 25 April (Anzac Day);

11

(vi) the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);

12

13

(vii) 25 December (Christmas Day);

14

(viii) 26 December (Boxing Day);

15

16

(b) any other day, or part-day, declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

17

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22

*Substituted public holidays under State or Territory laws*

23

(2) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subsection (1), then the substituted day or part-day is the ***public holiday***.

24

25

26

27

*Substituted public holidays under modern awards*

28

(3) A modern award may substitute (or provide for the substitution of) a day or part-day for a day or part-day that would otherwise be a public holiday because of subsection (1) or (2).

29

30

**55 Entitlement to be absent from employment on public holiday**

- 1
- 2 (1) Subject to subsections (2) to (4), an employee is entitled to be  
3 absent from his or her employment on a day or part-day that is a  
4 public holiday in the place where the employee is based for work  
5 purposes.
- 6 (2) An employer may request an employee to work on a public holiday  
7 if the request is reasonable.
- 8 (3) If an employer requests an employee to work on a public holiday,  
9 the employee may refuse the request if:  
10 (a) the request is not reasonable; or  
11 (b) the refusal is reasonable.
- 12 (4) In determining whether a request, or a refusal of a request, to work  
13 on a public holiday is reasonable, the following must be  
14 considered:  
15 (a) the nature of the employer's workplace or enterprise  
16 (including its operational requirements), and the nature of the  
17 work performed by the employee;  
18 (b) the employee's personal circumstances, including family  
19 responsibilities;  
20 (c) whether the employee could reasonably expect that the  
21 employer might request work on the public holiday;  
22 (d) whether the employee is entitled to receive overtime  
23 payments, penalty rates or other compensation for, or a level  
24 of remuneration that reflects an expectation of, work on the  
25 public holiday;  
26 (e) the type of employment of the employee (for example,  
27 whether full-time, part-time, casual or shiftwork);  
28 (f) the amount of notice in advance of the public holiday given  
29 by the employer when making the request;  
30 (g) in relation to the refusal of a request—the amount of notice  
31 in advance of the public holiday given by the employee when  
32 refusing the request;  
33 (h) any other relevant matter.

1 **56 Payment for absence on public holiday**

2 If, in accordance with this Division, an employee is absent from his  
3 or her employment on a day or part-day that is a public holiday, the  
4 employer must pay the employee at the employee's base rate of  
5 pay for the employee's ordinary hours of work on the day or  
6 part-day.

7 Note: If the employee does not have ordinary hours of work on the public  
8 holiday, the employee is not entitled to payment under this section.  
9 For example, the employee is not entitled to payment if the employee  
10 is a casual employee who is not rostered on for the public holiday, or  
11 is a part-time employee whose part-time hours do not include the day  
12 of the week on which the public holiday occurs.

1

2 **Division 10—Notice of termination and redundancy pay**

3 **Subdivision A—Notice of termination or payment in lieu of**  
4 **notice**

5 **57 Requirement for notice of termination or payment in lieu**

6 *Notice specifying day of termination*

7 (1) An employer must not terminate an employee’s employment unless  
8 the employer has given the employee written notice of the day of  
9 the termination (which cannot be before the day the notice is  
10 given).

11 Note 1: Section 64 describes situations in which this section does not apply.

12 Note 2: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how  
13 a notice may be given. In particular, the notice may be given to an  
14 employee by:

- 15 (a) delivering it personally; or
- 16 (b) leaving it at the employee’s last known address; or
- 17 (c) sending it by pre-paid post to the employee’s last known address.

18 *Amount of notice or payment in lieu of notice*

19 (2) The employer must not terminate the employee’s employment  
20 unless:

- 21 (a) the time between giving the notice and the day of the  
22 termination is at least the period (the ***minimum period of***  
23 ***notice***) worked out under subsection (3); or
- 24 (b) the employer has paid the employee payment in lieu of notice  
25 of at least the amount the employer would have been liable to  
26 pay the employee at the full rate of pay for the hours he or  
27 she would have worked had the employment continued until  
28 the end of the minimum period of notice.

29 (3) Work out the minimum period of notice as follows:

- 30 (a) first, work out the period using the following table:

Section 58

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<b>Period</b>		
	<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period</b>
1	Not more than 1 year	1 week
2	More than 1 year but not more than 3 years	2 weeks
3	More than 3 years but not more than 5 years	3 weeks
4	More than 5 years	4 weeks

1 (b) then increase the period by 1 week if the employee is over 45  
2 years old and has completed at least 2 years of continuous  
3 service with the employer at the end of the day the notice is  
4 given.

5 **58 Transmission of business and notice of termination or payment in**  
6 **lieu**

7 (1) For the purposes of section 57, a transferring employee's period of  
8 continuous service includes each period of continuous service of  
9 the employee with an old employer in the business being  
10 transferred (whether or not the old employer was previously a new  
11 employer in connection with the business).

12 (2) However, the employee's continuous service with an old employer  
13 is disregarded so far as the employee had previously received  
14 notice of termination, or payment in lieu of such notice, in respect  
15 of that service.

16 **59 Modern awards may provide for notice of termination by**  
17 **employees**

18 A modern award may include provisions specifying the period of  
19 notice an employee must give in order to terminate his or her  
20 employment.

**Subdivision B—Redundancy pay**

**60 Redundancy pay**

- (1) An employee is entitled to be paid redundancy pay by the employer if the employee’s employment is terminated:
- (a) at the employer’s initiative because the employer no longer requires the job done by the employee to be done by anyone, except where this is due to the ordinary and customary turnover of labour; or
  - (b) because of the insolvency or bankruptcy of the employer.

Note: Sections 62, 63 and 64 describe situations in which the employee does not have this entitlement.

- (2) The amount of the redundancy pay equals the total amount payable to the employee for the redundancy pay period worked out using the following table at the employee’s base rate of pay for his or her ordinary hours of work:

<b>Redundancy pay period</b>		
	<b>Employee’s period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

**61 Variation of redundancy pay for other employment or incapacity to pay**

- (1) This section applies if:

Section 62

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- 1 (a) an employee is entitled to be paid an amount of redundancy  
2 pay by the employer because of section 60; and  
3 (b) the employer:  
4 (i) obtains other acceptable employment for the employee;  
5 or  
6 (ii) cannot pay the amount.
- 7 (2) On application by the employer, Fair Work Australia may  
8 determine that the amount of redundancy pay is reduced to the  
9 amount specified in the determination.
- 10 (3) A determination has effect according to its terms, despite  
11 section 60.

12 **62 Exclusions from obligation to pay redundancy pay**

- 13 (1) Section 60 does not apply to the employee if:  
14 (a) his or her period of continuous service with the employer on  
15 termination is less than 12 months; or  
16 (b) at the earlier of the following times, the employer employed  
17 fewer than 15 employees:  
18 (i) the time the employee is given notice of the termination  
19 as described in subsection 57(1);  
20 (ii) immediately before the termination.
- 21 (2) For the purpose of calculating the number of employees employed  
22 by the employer at the time applicable under paragraph (1)(b):  
23 (a) subject to paragraph (b) of this subsection, all employees  
24 employed by the employer at that time are to be counted,  
25 including:  
26 (i) the employee whose employment is being terminated;  
27 and  
28 (ii) any other employee of the employer whose employment  
29 is also being terminated; but  
30 (b) a casual employee is not to be counted unless the casual  
31 employee has, immediately before that time, been engaged  
32 by the employer on a regular and systematic basis for a  
33 sequence of periods of employment during a period of at  
34 least 12 months.

- 1           (3) For the purpose of calculating the number of employees employed  
2           by the employer at the time applicable under paragraph (1)(b),  
3           related bodies corporate (within the meaning of section 50 of the  
4           *Corporations Act 2001*) are taken to be one entity.

5   **63 Transmission of business and redundancy pay**

6           *Transferring employee*

- 7           (1) Section 60 does not apply to the termination of a transferring  
8           employee's employment that occurs in connection with the transfer  
9           of a business if the new employer recognises the employee's  
10          service with an old employer in the business being transferred  
11          (whether or not the old employer was previously a new employer  
12          in connection with the business).

13          *Employee who rejects offer of employment with new employer*

- 14          (2) Section 60 does not apply to an employee in a business being  
15          transferred if he or she rejects an offer of employment with the new  
16          employer:  
17              (a) on terms and conditions substantially similar to, and,  
18              considered on an overall basis, no less favourable than, the  
19              employee's terms and conditions of employment with the old  
20              employer immediately before the termination of that  
21              employment; and  
22              (b) recognising the employee's service with an old employer in  
23              the business (whether or not the old employer was previously  
24              a new employer in connection with the business).
- 25          (3) On application by the employee, Fair Work Australia may, if  
26          satisfied that subsection (2) operates unfairly to him or her,  
27          determine that the old employer must pay the employee a specified  
28          amount of redundancy pay. The amount must not exceed his or her  
29          entitlement under section 60 apart from this section.
- 30          (4) The determination has effect according to its terms.

1 **Subdivision C—Limits on scope of this Division**

2 **64 Limits on scope of this Division**

3 *Employees not covered by this Division*

4 (1) This Division does not apply to any of the following employees:

- 5 (a) an employee employed for a specified period of time or for a  
6 specified task;
- 7 (b) an employee serving a period of probation, or a qualifying  
8 period of employment, that is determined in advance and is  
9 of a duration prescribed by the regulations;
- 10 (c) an employee whose employment is terminated because of  
11 serious misconduct;
- 12 (d) a casual employee;
- 13 (e) a seasonal employee;
- 14 (f) a trainee (other than an apprentice) to whom a training  
15 arrangement applies;
- 16 (g) an employee prescribed by the regulations as an employee to  
17 whom this Division does not apply.

18 (2) Paragraph (1)(a) does not prevent this Division from applying to an  
19 employee if a substantial reason for employing the employee as  
20 described in that paragraph was to avoid the application of this  
21 Division.

22 *Other employees not covered by notice of termination provisions*

23 (3) Subdivision A does not apply to:

- 24 (a) a daily hire employee working in the building and  
25 construction industry (including working in connection with  
26 the erection, repair, renovation, maintenance, ornamentation  
27 or demolition of buildings or structures); or
- 28 (b) a daily hire employee working in the meat industry in  
29 connection with the slaughter of livestock; or
- 30 (c) a weekly hire employee working in connection with the meat  
31 industry and whose termination of employment is determined  
32 solely by seasonal factors; or

- 1 (d) an employee prescribed by the regulations as an employee to  
2 whom that Subdivision does not apply.

3 *Other employees not covered by redundancy pay provisions*

- 4 (4) Subdivision B does not apply to:  
5 (a) an employee who is an apprentice; or  
6 (b) an employee covered by a modern award that includes an  
7 industry-specific redundancy scheme; or  
8 (c) an employee prescribed by the regulations as an employee to  
9 whom that Subdivision does not apply.

1

2 **Division 11—Fair Work Information Statement**

3 **65 Fair Work Australia to publish statement**

4 (1) Fair Work Australia must publish in the *Gazette* a statement called  
5 the Fair Work Information Statement.

6 Note: Fair Work Australia must publish the Fair Work Information  
7 Statement in the *Gazette* as occasion requires (for example whenever  
8 Fair Work Australia changes the statement): see subsection 33(1) of  
9 the *Acts Interpretation Act 1901*.

10 (2) The Fair Work Information Statement must contain information  
11 about the following:

- 12 (a) the National Employment Standards;  
13 (b) modern awards;  
14 (c) agreement-making under this Act;  
15 (d) the right to freedom of association;  
16 (e) the role of Fair Work Australia.

17 (3) The regulations may prescribe other matters relating to the content  
18 or form of the Fair Work Information Statement, or the manner in  
19 which employers may give the Fair Work Information Statement to  
20 employees.

21 (4) A statement published under subsection (1) is not a legislative  
22 instrument.

23 **66 Giving new employees the Fair Work Information Statement**

24 (1) An employer must give each employee the Fair Work Information  
25 Statement before, or as soon as practicable after, the employee  
26 commences employment.

27 (2) Subsection (1) does not require the employer to give the employee  
28 the Fair Work Information Statement more than once in any 12  
29 months.

30 Note: This is relevant if the employer employs the employee more than once  
31 in the 12 months.

