The National Employment Standards
The National Employment Standards

Contents

The National Employment Standards 1

Division 1—Preliminary 1

1 Definitions ................................................................. 1
2 Purpose of Part ......................................................... 4
3 Relationship between National Employment Standards and modern awards ........................................ 5
4 Meaning of base rate of pay .................................... 6
5 Meaning of child ..................................................... 6
6 Meaning of full rate of pay ......................................... 7
7 Meaning of service .................................................. 7
8 Restriction on taking or accruing leave or absence while receiving workers’ compensation ...................... 8
9 Modern awards may provide for school-based apprentices and trainees to be paid loadings in lieu ...................... 9
10 Regulations about what modern awards can do .......... 9
11 Relationship with other Commonwealth legislation .......... 9

Division 2—Maximum weekly hours 10

12 Maximum weekly hours ........................................... 10

Division 3—Requests for flexible working arrangements 12

13 Requests for flexible working arrangements ................ 12

Division 4—Parental leave and related entitlements 13

Subdivision A—General 13

14 General rule—employee must have completed at least 12 months of service ............................................. 13
15 General rule for adoption-related leave—child must be under school age etc. ............................................. 14

Subdivision B—Parental leave 14

16 Entitlement to unpaid parental leave .......................... 14
17 The period of leave: other than for members of an employee couple who each intend to take leave .......... 15
18 The period of leave: members of an employee couple who each intend to take leave .................................. 16
Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth ..............................................17
Notice and evidence requirements ...................................................19
Extending period of unpaid parental leave: extending to use more of available parental leave period ...........................................20
Extending period of unpaid parental leave: extending for up to 12 months beyond available parental leave period ......................21
Reducing period of unpaid parental leave ........................................22
Employee who ceases to have responsibility for care of child...........22
Interaction with paid leave ..............................................................23

Subdivision C—Other entitlements 23
Unpaid special maternity leave ........................................................23
Transfer to a safe job .......................................................................24
Consultation with employee on unpaid parental leave ....................25
Return to work guarantee .................................................................26
Unpaid pre-adoption leave ..............................................................26

Division 5—Annual leave 28
Division applies to employees other than casual employees ........... 28
Entitlement to annual leave .............................................................28
Taking paid annual leave ..............................................................28
Employee not taken to be on paid annual leave at certain times ..............................................................28
Payment for annual leave ..............................................................29
Modern awards may include certain kinds of provisions................. 29

Division 6—Personal/carer’s leave and compassionate leave 30
Subdivision A—Paid personal/carer’s leave 30
Subdivision applies to employees other than casual employees ....... 30
Entitlement to paid personal/carer’s leave ........................................30
Taking paid personal/carer’s leave ..................................................30
Employee taken not to be on paid personal/carer’s leave on public holiday ..............................................................31
Payment for paid personal/carer’s leave ...........................................31
Modern awards may include provisions dealing with cashing out of paid personal/carer’s leave ...........................................31

Subdivision B—Unpaid carer’s leave 31
Entitlement to unpaid carer’s leave..................................................31
Taking unpaid carer’s leave ............................................................32

Subdivision C—Compassionate leave 32
Entitlement to compassionate leave ................................................32
46 Taking compassionate leave ............................................................ 32
47 Payment for compassionate leave (other than for casual employees) ............................................................ 33

Subdivision D—Notice and evidence requirements  33
48 Notice and evidence requirements ................................................... 33

Division 7—Community service leave  35
49 Meaning of eligible community service activity ........................................ 35
50 Entitlement to be absent from employment for engaging in eligible community service activity ........................................ 35
51 Notice and evidence requirements ................................................... 36
52 Payment to employees (other than casuals) on jury service ..................... 36

Division 8—Long service leave  38
53 Entitlement to long service leave ...................................................... 38

Division 9—Public holidays  40
54 Meaning of public holiday ............................................................... 40
55 Entitlement to be absent from employment on public holiday .......... 41
56 Payment for absence on public holiday ........................................... 41

Division 10—Notice of termination and redundancy pay  41
Subdivision A—Notice of termination or payment in lieu of notice  41
57 Requirement for notice of termination or payment in lieu ..................... 41
58 Transmission of business and notice of termination or payment in lieu ........................................ 41
59 Modern awards may provide for notice of termination by employees ........................................ 41

Subdivision B—Redundancy pay  41
60 Redundancy pay ........................................................................... 41
61 Variation of redundancy pay for other employment or incapacity to pay ........................................ 41
62 Exclusions from obligation to pay redundancy pay ........................................ 41
63 Transmission of business and redundancy pay ........................................ 41

Subdivision C—Limits on scope of this Division  41
64 Limits on scope of this Division ...................................................... 41

Division 11—Fair Work Information Statement  41
65 Fair Work Australia to publish statement ........................................ 41
66 Giving new employees the Fair Work Information Statement ............. 41
The National Employment Standards

Division 1—Preliminary

1 Definitions

In this Part:

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

(a) unpaid parental leave taken in association with the placement of a child for adoption (see section 16);

(b) unpaid pre-adoption leave (see section 30).

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

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

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

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

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

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

(a) unpaid parental leave taken in association with the birth of a child (see section 16);

(b) unpaid special maternity leave (see section 26).

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

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

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

*continuous service* has a meaning affected by section 7.
day of placement, in relation to the adoption of a child by an employee, means the earlier of the following days:
(a) the day on which the employee first takes custody of the child for the adoption;
(b) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.

de facto partner, in relation to an employee:
(a) means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
(b) includes a former de facto partner of the employee.

eligible community service activity has the meaning given by section 49.

employee couple: two employees are an employee couple if each of the employees is the spouse or de facto partner of the other.

excepted period has the meaning given by subsection 7(2).

full rate of pay of an employee has the meaning given by section 6.

immediate family: the following are members of an employee’s immediate family:
(a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee;
(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

industry-specific redundancy scheme means redundancy arrangements in a modern award that are described in the award as an industry-specific redundancy scheme.

jury service pay means an amount paid under a law of the Commonwealth, or of a State or Territory, for or in respect of jury service, other than an amount that is, or that is in the nature of, an expense-related allowance.
jury service summons means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

medical certificate means a certificate signed by a medical practitioner.

medical practitioner means a person registered, or licensed, as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

National Employment Standards has the meaning given by subsection 2(3).

paid annual leave means paid annual leave to which an employee is entitled under section 32.

paid no safe job leave means paid no safe job leave to which an employee is entitled under paragraph 27(3)(b).

paid personal/carer’s leave means paid personal/carer’s leave to which an employee is entitled under section 38.

pieceworker means an employee who, in a modern award that applies to the employee’s employment, is defined or described as a pieceworker.

pre-parental leave position has the meaning given by subsection 28(2).

public holiday has the meaning given by section 54.

school age, in relation to a child, means the age at which the child is required by a law of the State or Territory in which the child lives to start attending school.

school-based apprentice means an employee who is an apprentice and whose employment is subject to a school-based training arrangement.

school-based trainee means an employee (other than a school-based apprentice) whose employment is subject to a school-based training arrangement.
2 Purpose of Part

(1) The purpose of this Part is to set out minimum standards that apply to the employment of employees.

(2) The minimum standards relate to the following matters:
(a) maximum weekly hours (Division 2);
(b) requests for flexible working arrangements (Division 3);
(c) parental leave and related entitlements (Division 4);
(d) annual leave (Division 5);
(e) personal/carer’s leave and compassionate leave (Division 6);
(f) community service leave (Division 7);
(g) long service leave (Division 8);
(h) public holidays (Division 9);
(i) notice of termination and redundancy pay (Division 10);
(j) Fair Work Information Statement (Division 11).
This Part constitutes the *National Employment Standards*.

### 3 Relationship between National Employment Standards and modern awards

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

(2) A modern award may include the following kinds of provisions:
   (a) provisions that are ancillary or incidental to the operation of an entitlement of an employee under the National Employment Standards;
   (b) provisions that supplement the National Employment Standards;

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

Note 1: Ancillary or incidental provisions permitted by paragraph (a) include (for example) provisions:
   (a) under which, instead of taking paid annual leave at the rate of pay required by section 35, an employee may take twice as much annual leave at half that rate of pay; or
   (b) that specify when payment under section 35 in respect of paid annual leave must be made.

Note 2: Supplementary provisions permitted by paragraph (b) include (for example) provisions:
   (a) that increase the amount of paid annual leave to which an employee is entitled beyond the number of weeks applicable under section 32; or
   (b) that allow an employee to take paid personal/carer’s leave while he or she is on unpaid parental leave (despite subsection 25(2)).

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

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

(4) A modern award has no effect to the extent to which it contravenes this section.
Division 1  Preliminary

Section 4

(5) Nothing in this section affects a modern award to the extent to which it includes provisions that modern awards are expressly permitted to include:
(a) by a provision of this Part; or
(b) by regulations made for the purposes of paragraph 10(a).

Note: In determining what is permitted to be included in a modern award by a provision mentioned in paragraph (a), any regulations made for the purpose of paragraph 10(b) must be taken into account.

(6) The National Employment Standards have effect subject to provisions included in a modern award as mentioned in subsection (5).

Note: See also the note to subsection 12(6).

4  Meaning of base rate of pay

(1) The base rate of pay of an employee, other than a pieceworker, is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:
(a) incentive-based payments and bonuses;
(b) loadings;
(c) monetary allowances;
(d) overtime or penalty rates;
(e) any other separately identifiable amounts.

(2) The base rate of pay of an employee who is a pieceworker is the rate of pay specified in the relevant modern award as the employee’s base rate of pay for the purpose of this Part.

5  Meaning of child

(1) A child of a person is:
(a) a biological child of the person; or
(b) an adopted child or step-child of the person; or
(c) if, at any time, the person was in a relationship as a couple with another person (whether the persons are the same sex or different sexes)—a child who is a product of the person’s relationship with that other person.

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

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

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

(a) the other person is the parent of the child; and

(b) the child is the sibling of any other child of the other person.

6 Meaning of full rate of pay

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

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

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

7 Meaning of service

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

(1) For the purpose of this Part, other than Division 3 (requests for flexible working arrangements), Division 4 (parental leave and related entitlements) and Subdivision A of Division 10 (notice of termination or payment in lieu of notice):
(a) a period of service by an employee with an employer is a period during which the employee is employed by the employer, but not including any excepted period; and

(b) an excepted period does not break an employee’s continuous service with an employer, but is not to be counted towards the length of the employee’s continuous service.

(2) An excepted period is:

(a) any period of unauthorised absence; or
(b) any period of unpaid leave or unpaid authorised absence, other than:
   (i) a period of absence under Division 7 (community service leave); or
   (ii) a period of leave or absence of a kind prescribed by the regulations.

In Divisions 3 and 4 and Subdivision A of Division 10

(3) For the purpose of Division 3 (requests for flexible working arrangements), Division 4 (parental leave and related entitlements) and Subdivision A of Division 10 (notice of termination or payment in lieu of notice):

(a) a period of service by an employee with an employer is a period during which the employee is employed by the employer, but not including any period of unauthorised absence; and

(b) a period of unauthorised absence does not break an employee’s continuous service with an employer, but is not to be counted towards the length of the employee’s continuous service.

8 Restriction on taking or accruing leave or absence while receiving workers’ compensation

(1) Subject to subsections (2) and (3), an employee is not entitled to take or accrue any leave or absence (whether paid or unpaid) under this Part during a period (a compensation period) when the employee is absent from work because of a personal illness, or a personal injury, for which the employee is receiving compensation.
payable under a law (a compensation law) of the Commonwealth, or of a State or Territory, relating to workers’ compensation.

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

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

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

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

(a) paid annual leave;
(b) paid personal/carer’s leave;
(c) paid absence under Division 9 (public holidays).

10 Regulations about what modern awards can do

The regulations may:

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

11 Relationship with other Commonwealth legislation

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

The National Employment Standards 9
Division 2—Maximum weekly hours

12 Maximum weekly hours

Standard hours

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

Reasonable additional hours

(2) The employer may request or require the employee to work reasonable additional hours in the week.

(3) The employee may refuse to work additional hours (beyond those mentioned in subsection (1)) if they are unreasonable.

(4) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (2) and (3), the following must be considered:
   (a) any risk to employee health and safety from working the additional hours;
   (b) the employee’s personal circumstances, including family responsibilities;
   (c) the needs of the workplace or enterprise in which the employee is employed;
   (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
   (e) the notice (if any) given by the employer of any request or requirement to work the additional hours;
(f) the notice (if any) given by the employee of his or her intention to refuse to work the additional hours;
(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
(h) the nature of the employee’s role, and the employee’s level of responsibility;
(i) whether the additional hours are in accordance with averaging provisions included a modern award;
(j) any other relevant matter.

Authorised leave treated as hours worked

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

Modern awards may provide for averaging of hours of work

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

Note: Hours in excess of the hours referred to in paragraph (6)(a) or (b) that are worked in a week in accordance with averaging provisions in a modern award will be treated as additional hours for the purpose of this section, but the averaging provisions will be relevant in determining whether the additional hours are reasonable (see paragraph (4)(i)).
Division 3—Requests for flexible working arrangements

13 Requests for flexible working arrangements

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

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

(2) The employee is not entitled to make the request unless:
   (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
   (b) for a casual employee—the employee:
      (i) has been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before making the request; and
      (ii) has a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

(3) The request must:
   (a) be in writing; and
   (b) set out details of the change sought and reasons for the change.

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

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

(6) If the employer refuses the request, the written response under subsection (4) must include the reasons for the refusal.
Division 4—Parental leave and related entitlements

Subdivision A—General

14 General rule—employee must have completed at least 12 months of service

Employees other than casual employees

(1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave) unless the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before:

(a) if the leave is birth-related leave—the date of birth, or the expected date of birth, of the child; or

(b) if the leave is adoption-related leave—the day of placement, or the expected day of placement, of the child.

Casual employees

(2) A casual employee is not entitled to leave (other than unpaid pre-adoption leave) under this Division unless:

(a) the employee has, or will have, been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before:

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

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

(b) but for the birth or expected birth of the child, or the placement or the expected placement of the child, the employee would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.
Division 4  Parental leave and related entitlements

Section 15

15  General rule for adoption-related leave—child must be under school age etc.

An employee is not entitled to adoption-related leave under this Division unless the child that is, or is to be, placed with the employee for adoption:

(a) is, or will be, under school age as at the day of placement, or the expected day of placement, of the child; and

(b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement, or the expected day of placement, of the child; and

(c) is not a child of the employee or the employee’s spouse or de facto partner.

Subdivision B—Parental leave

16  Entitlement to unpaid parental leave

(1) An employee is entitled to 12 months of unpaid parental leave if:

(a) the leave is associated with:

(i) the birth of a child, being a child who is born to the employee or the employee’s spouse or de facto partner; or

(ii) the placement of a child with the employee for adoption; and

(b) the employee has or will have a responsibility for the care of the child.

Note 1: Entitlement is also affected by sections 14 and 15.

Note 2: The 12 months is reduced by the amount of any unpaid special maternity leave the employee has taken (see subsection 26(7)).

(2) A child is born to a person if (and only if):

(a) the person gives birth to the child; or

(b) the child is born, and the person is the biological mother or biological father of the child.
(3) Despite the definition of child in section 5, an employee is not entitled to unpaid parental leave in relation to a child if the child is not:
   (a) born to the employee or the employee’s spouse or de facto partner (within the meaning of subsection (2) of this section); or
   (b) placed with the employee for adoption.

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

When this section applies

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

Leave must be taken in single continuous period

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

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

When birth-related leave must start

(3) If the leave is birth-related leave for a female employee who is pregnant with, or gives birth to, the child, the period of leave may start up to 6 weeks before the expected date of birth of the child, but must not start later than the date of birth of the child.

(4) If subsection (3) does not apply, the period of leave must start on the date of birth of the child.

When adoption-related leave must start

(5) If the leave is adoption-related leave, the period of leave must start on the day of placement of the child.
Division 4  Parental leave and related entitlements

Section 18

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

When this section applies

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

Leave must be taken in single continuous period

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

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

When birth-related leave must start

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

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

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

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

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

When adoption-related leave must start

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

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

(b) the other employee’s period of leave must start immediately after the end of the first employee’s period of leave (or that 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):

---

The National Employment Standards 17
Section 19

(a) a statement of whether the employee is fit to work;
(b) if the employee is fit to work—a statement of whether it is
   inadvisable for the employee to continue in her present
   position during a stated period because of:
   (i) illness, or risks, arising out of the employee’s
       pregnancy; or
   (ii) hazards connected with the position.

Note: Personal information given to an employer under this subsection may
be regulated under the Privacy Act 1988.

(2) Subject to subsection (3), the employer may require the employee
   to take a period of unpaid parental leave (the period of leave) as
   soon as reasonably practicable if:
   (a) the employee does not give the employer the requested
       certificate within 7 days after the request; or
   (b) within 7 days after the request, the employee gives the
       employer a medical certificate stating that the employee is
       not fit for work; or
   (c) the following subparagraphs are satisfied:
       (i) within 7 days after the request, the employee gives the
           employer a medical certificate stating that the employee
           is fit for work, but that it is inadvisable for the employee
           to continue in her present position for stated period for a
           reason mentioned in subparagraph (1)(b)(i) or (ii);
       (ii) section 27 does not apply to the employee.

Note: If the medical certificate contains a statement as mentioned in
subparagraph (c)(i) and section 27 applies to the employee, the
employee is entitled under that section to be transferred to a safe job,
or to paid no safe job leave.

(3) The period of leave must not end later than the earlier of the
    following:
    (a) the end of the pregnancy;
    (b) if the employee has given the employer notice of the taking
        of a period of leave connected with the birth of the child
        (whether it is unpaid parental leave or some other kind of
        leave)—the start date of that leave.

(4) The period of leave:
(a) is an exception to the rule that the employee must take her unpaid parental leave in a single continuous period (see subsection 17(2) or 18(2)); and
(b) is an exception to the rules about when the employee’s period of unpaid parental leave must start (see subsection 17(3) or 18(3)).

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

(5) The employee is not required to comply with section 20 in relation to the period of leave.

20 Notice and evidence requirements

Notice

(1) An employee must give his or her employer written notice of the taking of unpaid parental leave under section 17 or 18 by the employee.

(2) The notice must be given to the employer:
   (a) at least 10 weeks before starting the leave; or
   (b) if that is not reasonably practicable—as soon as is reasonably practicable (which may be a time after the leave has started).

(3) The notice must specify the intended start and end dates of the leave.

Evidence

(4) An employee who has given his or her employer notice of the taking of unpaid parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person:
   (a) if the leave is birth-related leave—of the date of birth, or the expected date of birth, of the child; or
   (b) if the leave is adoption-related leave:
      (i) of the day of placement, or the expected day of placement, of the child; and
(ii) that the child is, or will be, under school age as at the
day of placement, or the expected day of placement, of
the child.

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

Compliance

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

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

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

When this section applies

(1) This section applies if:

(a) an employee has, in accordance with section 20, given notice
    of the taking of unpaid parental leave; and

(b) the period specified in the notice (the original leave period)
    is less than the employee's available parental leave period.

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

(a) a period of concurrent leave that the employee has taken in
    accordance with subsection 18(5);

(b) a period of unpaid parental leave that the employee has been
    required to take under subsection 19(2);

(c) a period by which the employee's entitlement to unpaid
    parental leave is reduced under paragraph 22(4)(c);

(d) a period of special maternity leave that the employee has
taken.
Parental leave and related entitlements **Division 4**

**Section 22**

*First extension by giving notice to employer*

(3) The employee may extend the period of unpaid parental leave by giving his or her employer written notice of the extension not later than 4 weeks before the end date of the original leave period. The notice must specify the new end date for the leave.

(4) Only one extension is permitted under subsection (3).

*Subsequent extensions by agreement with employer*

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

*No entitlement to extension beyond available parental leave period*

(6) Nothing in this section entitles the employee to extend the period of unpaid parental leave beyond the employee’s available parental leave period.

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

*Employee may request further period of leave*

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

*Making the request*

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

* Agreeing to the requested extension*

(3) The employer must agree to the requested extension, unless the employer has reasonable business grounds for refusing.
Division 4  Parental leave and related entitlements

Section 23

Special rules for employee couples

(4) The following paragraphs apply in relation to a member of an employee couple extending a period of unpaid parental leave in respect of a child under this section:

(a) the request must specify the amount (if any) of unpaid parental leave and unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;

(b) the period of the extension cannot exceed 12 months, less any period of unpaid parental leave or unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child before the extension starts;

(c) the amount of unpaid parental leave to which the other member of the employee couple is entitled under section 16 in respect of the child is reduced by the period of the extension.

23 Reducing period of unpaid parental leave

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

24 Employee who ceases to have responsibility for care of child

(1) This section applies to an employee who has taken unpaid parental leave in respect of a child if the employee ceases to have any responsibility for the care of the child.

(2) The employer may give the employee written notice requiring the employee to return to work on a specified day.

(3) The specified day:

(a) must be at least 4 weeks after the notice is given to the employee; and

(b) if the leave is birth-related leave taken by a female employee who has given birth—must not be earlier than 6 weeks after the date of birth of the child.
(4) The employee’s entitlement to unpaid parental leave in respect of
the child ends immediately before the specified day.

25 Interaction with paid leave

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

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

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

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

Subdivision C—Other entitlements

26 Unpaid special maternity leave

Entitlement to unpaid special maternity leave

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

Note: Entitlement is also affected by section 14.

Notice and evidence

(2) An employee must give her employer notice of the taking of
unpaid special maternity leave by the employee.
(3) The notice:
   (a) must be given to the employer as soon as reasonably practicable (which may be a time after the leave has started); and
   (b) must advise the employer of the period, or expected period, of the leave.

(4) An employee who has given her employer notice of the taking of unpaid special maternity leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in subsection (1).

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

(6) An employee is not entitled to take unpaid special maternity leave unless the employee complies with subsections (2) to (4).

Taking of special maternity leave reduces entitlement to unpaid parental leave

(7) A female employee’s entitlement to 12 months unpaid parental leave associated with the birth of a child (see section 16) is reduced by the amount of any unpaid special maternity leave taken by the employee while she was pregnant.

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

27 Transfer to a safe job

(1) This section applies to a female employee who is pregnant if:
   (a) she is entitled to unpaid parental leave; and
   (b) she has already complied with the notice and evidence requirements of section 20 for taking unpaid parental leave; and
   (c) she gives her employer evidence that would satisfy a reasonable person that she is fit to work, but that it is inadvisable for her to continue in her present position during a stated period (the risk period) because of:
Parental leave and related entitlements  Division 4

Section 28

(i) illness, or risks, arising out of her pregnancy; or
(ii) hazards connected with that position.

Note: Personal information given to an employer under this subsection may be regulated under the Privacy Act 1988.

(2) Without limiting the generality of paragraph (1)(c), an employer may require the evidence referred to in that paragraph to be a medical certificate.

(3) If this section applies to an employee:
(a) if there is an appropriate safe job available—the employer must transfer the employee to that job for the risk period, with no other change to the employee’s terms and conditions of employment; or
(b) if there is no appropriate safe job available—the employee is entitled to take paid no safe job leave for the risk period.

(4) An appropriate safe job is a safe job that has:
(a) the same ordinary hours of work as the employee’s present position; or
(b) a different number of ordinary hours agreed to by the employee.

(5) Without limiting paragraph (3)(a), if the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee’s full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.

(6) If the employee takes paid no safe job leave for the risk period, the employer must pay the employee at the employee’s base rate of pay for the employee’s ordinary hours of work in the risk period.

(7) If the employee’s pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.

28 Consultation with employee on unpaid parental leave

(1) If:
(a) an employee is on unpaid parental leave; and
Division 4  Parental leave and related entitlements

Section 29

(b) the employee’s employer makes a decision that will have a significant effect on the status, pay or location of the employee’s pre-parental leave position; the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.

(2) The employee’s pre-parental leave position is:

(a) unless paragraph (b) applies, the position the employee held before starting the unpaid parental leave; or

(b) if, before starting the unpaid parental leave, the employee:
   (i) was transferred to a safe job because of her pregnancy; or
   (ii) reduced her working hours due to her pregnancy; the position the employee held immediately before that transfer or reduction.

29  Return to work guarantee

On finishing unpaid parental leave, an employee is entitled to return to:

(a) the employee’s pre-parental leave position; or

(b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

30  Unpaid pre-adoption leave

Entitlement to unpaid pre-adoption leave

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

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

(2) An employee is not entitled to take a period of unpaid pre-adoption leave if:
(a) the employee could instead take some other form of leave; and
(b) the employer would prefer the employee to take that other form of leave.

(3) An employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:
(a) a single continuous period of up to 2 days; or
(b) any separate periods to which the employee and the employer agree.

Notice and evidence

(4) An employee must give his or her employer notice of the taking of unpaid pre-adoption leave by the employee.

(5) The notice:
(a) must be given to the employer as soon as reasonably practicable (which may be a time after the leave has started); and
(b) must advise the employer of the period, or expected period, of the leave.

(6) An employee who has given his or her employer notice of the taking of unpaid pre-adoption leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as mentioned in subsection (1).

(7) An employee is not entitled to take unpaid pre-adoption leave unless the employee complies with subsections (4) to (6).

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

*The National Employment Standards*
Division 5—Annual leave

31 Division applies to employees other than casual employees

This Division applies to employees, other than casual employees.

32 Entitlement to annual leave

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

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

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

33 Taking paid annual leave

(1) Paid annual leave may be taken for a period agreed between an employee and his or her employer.

(2) The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

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

(1) If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.
Annual leave  Division 5

Section 35

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

35 Payment for annual leave

(1) If, in accordance with this Division, an employee takes a period of paid annual leave, the employer must pay the employee at the employee’s base rate of pay for the employee’s ordinary hours of work in the period.

(2) If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee under subsection (1) if the employee had taken that period of annual leave.

36 Modern awards may include certain kinds of provisions

(1) A modern award may include provisions of any of the following kinds:

(a) provisions for the cashing out of paid annual leave;

(b) provisions requiring an employee (or allowing for an employee to be required) to take paid annual leave in particular circumstances;

(c) provisions otherwise dealing with the taking of paid annual leave.

(2) Provisions in a modern award for the cashing out of paid annual leave must:

(a) prohibit the employer from exerting undue influence or undue pressure on the employee to cash out the employee’s leave; and

(b) provide that the employee must be paid the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.
Division 6—Personal/carer’s leave and compassionate leave

Subdivision A—Paid personal/carer’s leave

37 Subdivision applies to employees other than casual employees

This Subdivision applies to employees, other than casual employees.

38 Entitlement to paid personal/carer’s leave

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

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

39 Taking paid personal/carer’s leave

An employee may take paid personal/carer’s leave if the leave is taken:

(a) because the employee is unfit for work because of a personal illness, or personal injury, affecting the employee; or

(b) to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because of:

(i) a personal illness, or personal injury, affecting the member; or

(ii) an unexpected emergency affecting the member.

Note: The notice and evidence requirements of section 48 must be complied with.
40 Employee taken not to be on paid personal/carer’s leave on public holiday

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

41 Payment for paid personal/carer’s leave

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

42 Modern awards may include provisions dealing with cashing out of paid personal/carer’s leave

(1) A modern award may include provisions for the cashing out of paid personal/carer’s leave.

(2) Provisions in a modern award for the cashing out of paid personal/carer’s leave must:

(a) prohibit the employer from exerting undue influence or undue pressure on the employee to cash out the employee’s leave; and

(b) provide that the employee must be paid the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

Subdivision B—Unpaid carer’s leave

43 Entitlement to unpaid carer’s leave

An employee is entitled to 2 days of unpaid carer’s leave for each occasion (a permissible occasion) when a member of the employee’s immediate family, or a member of the employee’s household, requires care or support because of:
Division 6  Personal/carer’s leave and compassionate leave

Section 44

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

44 Taking unpaid carer’s leave

(1) Subject to subsection (3), an employee may take unpaid carer’s leave for a particular permissible occasion if the leave is taken to provide care or support as mentioned in section 43.

(2) An employee may take unpaid carer’s leave for a particular permissible occasion as:
   (a) a single continuous period of up to 2 days; or
   (b) any separate periods to which the employee and his or her employer agree.

(3) An employee cannot take unpaid carer’s leave during a particular period if the employee could instead take paid personal/carer’s leave.

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

Subdivision C—Compassionate leave

45 Entitlement to compassionate leave

An employee is entitled to 2 days of compassionate leave for each occasion (a permissible occasion) when a member of the employee’s immediate family, or a member of the employee’s household:
   (a) contracts or develops a personal illness that poses a serious threat to his or her life; or
   (b) sustains a personal injury that poses a serious threat to his or her life; or
   (c) dies.

46 Taking compassionate leave

(1) An employee may take compassionate leave for a particular permissible occasion if the leave is taken:
Personal/carer’s leave and compassionate leave  Division 6

Section 47

(a) for the purpose of spending time with the member of the employee’s immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in section 45; or
(b) after the death of the member of the employee’s immediate family or household referred to in section 45.

(2) An employee may take compassionate leave for a particular permissible occasion as:
(a) a single continuous period of 2 days; or
(b) 2 separate periods of 1 day each; or
(c) any separate periods to which the employee and his or her employer agree.

(3) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

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

47 Payment for compassionate leave (other than for casual employees)

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

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

Subdivision D—Notice and evidence requirements

48 Notice and evidence requirements

Notice

(1) An employee must give his or her employer notice of the taking of leave under this Division by the employee.

(2) The notice:
Division 6  Personal/carer’s leave and compassionate leave

Section 48

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

Evidence

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

Compliance

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

Modern awards may include evidence requirements

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

Note: Personal information given to an employer under this section may be regulated under the Privacy Act 1988.
Division 7—Community service leave

49 Meaning of eligible community service activity

(1) Each of the following is an eligible community service activity:
   (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
   (b) carrying out a voluntary emergency management activity
       (within the meaning of section 659); or
   (c) an activity prescribed in regulations made for the purpose of
       subsection (2).

(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.

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

An employee who engages in an eligible community service
activity is entitled to be absent from his or her employment for a
period if:
   (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.
51 Notice and evidence requirements

Notice

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

(2) The notice:
   (a) must be given to the employer as soon as reasonably practicable (which may be a time after the absence has started); and
   (b) must advise the employer of the period, or expected period, of the absence.

Evidence

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

Compliance

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

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

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

(1) This section applies if:
   (a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and
   (b) the employee is not a casual employee.

(2) Subject to subsections (3), (4) and (5), the employer must pay the employee at the employee’s base rate of pay for the employee’s ordinary hours of work in the period.
(3) The employer may require the employee to give the employer
evidence that would satisfy a reasonable person:
   (a) that the employee has taken all necessary steps to obtain any
       amount of jury service pay to which the employee is entitled;
       and
   (b) of the total amount (even if it is a nil amount) of jury service
       pay that has been paid, or is payable, to the employee for the
       period.

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

(4) If, in accordance with subsection (3), the employer requires the
employee to give the employer the evidence referred to in that
subsection:
   (a) the employee is not entitled to payment under subsection (2)
       unless the employee provides the evidence; and
   (b) if the employee provides the evidence—the amount payable
       to the employee under subsection (2) is reduced by the total
       amount of jury service pay that has been paid, or is payable,
       to the employee, as disclosed in the evidence.

(5) If an employee is absent because of jury service in relation to a
particular jury service summons for a period, or a number of
periods, of more than 10 days in total:
   (a) the employer is only required to pay the employee for the
       first 10 days of absence; and
   (b) the evidence provided in response to a requirement under
       subsection (3) need only relate to the first 10 days of
       absence; and
   (c) the reference in subsection (4) to the total amount of jury
       service pay as disclosed in evidence is a reference to the total
       amount so disclosed for the first 10 days of absence.
Division 8—Long service leave

53 Entitlement to long service leave

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

(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

(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:

(i) a preserved State agreement;
(ii) a workplace determination;
(iii) a pre-reform certified agreement (within the meaning of Schedule 7);
(iv) a pre-reform AWA;
(v) a section 170MX award (within the meaning of Schedule 7);
(vi) an old IR agreement (within the meaning of Schedule 7);
(vii) an employment agreement (within the meaning of section 887).

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.

(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:

(a) that would have applied to the employee’s employment immediately before the commencement of this Part if:
(i) the employee had, at that time, been in his or her current circumstances of employment; and
(ii) no workplace agreement, AWA (within the meaning of Schedule 7A) or workplace determination, had (whether at that time or earlier) applied to the employee’s employment; and
(b) that would have entitled the employee to long service leave (or that relate to matters that are ancillary or incidental to such an entitlement).
Division 9—Public holidays

54 Meaning of public holiday

(1) The following are public holidays:

(a) each of these days:

(i) 1 January (New Year’s Day);
(ii) 26 January (Australia Day);
(iii) Good Friday;
(iv) Easter Monday;
(v) 25 April (Anzac Day);
(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);
(vii) 25 December (Christmas Day);
(viii) 26 December (Boxing Day);

(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.

Substituted public holidays under State or Territory laws

(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.

Substituted public holidays under modern awards

(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).
55 Entitlement to be absent from employment on public holiday

(1) Subject to subsections (2) to (4), an employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.

(2) An employer may request an employee to work on a public holiday if the request is reasonable.

(3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:
   (a) the request is not reasonable; or
   (b) the refusal is reasonable.

(4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be considered:
   (a) the nature of the employer’s workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;
   (b) the employee’s personal circumstances, including family responsibilities;
   (c) whether the employee could reasonably expect that the employer might request work on the public holiday;
   (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;
   (e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);
   (f) the amount of notice in advance of the public holiday given by the employer when making the request;
   (g) in relation to the refusal of a request—the amount of notice in advance of the public holiday given by the employee when refusing the request;
   (h) any other relevant matter.
Section 56

56 Payment for absence on public holiday

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

Note: If the employee does not have ordinary hours of work on the public holiday, the employee is not entitled to payment under this section. For example, the employee is not entitled to payment if the employee is a casual employee who is not rostered on for the public holiday, or is a part-time employee whose part-time hours do not include the day of the week on which the public holiday occurs.
Division 10—Notice of termination and redundancy pay

Subdivision A—Notice of termination or payment in lieu of notice

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

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

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

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

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

Amount of notice or payment in lieu of notice

2. The employer must not terminate the employee’s employment unless:

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

3. Work out the minimum period of notice as follows:

   (a) first, work out the period using the following table:
Division 10  Notice of termination and redundancy pay

Section 58

### Period

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

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

58 Transmission of business and notice of termination or payment in lieu

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

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

59 Modern awards may provide for notice of termination by employees

A modern award may include provisions specifying the period of notice an employee must give in order to terminate his or her 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:

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

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

(1) This section applies if:
Division 10 Notice of termination and redundancy pay

Section 62

(a) an employee is entitled to be paid an amount of redundancy pay by the employer because of section 60; and
(b) the employer:
   (i) obtains other acceptable employment for the employee;
   or
   (ii) cannot pay the amount.

(2) On application by the employer, Fair Work Australia may determine that the amount of redundancy pay is reduced to the amount specified in the determination.

(3) A determination has effect according to its terms, despite section 60.

62 Exclusions from obligation to pay redundancy pay

(1) Section 60 does not apply to the employee if:
   (a) his or her period of continuous service with the employer on termination is less than 12 months; or
   (b) at the earlier of the following times, the employer employed fewer than 15 employees:
       (i) the time the employee is given notice of the termination as described in subsection 57(1);
       (ii) immediately before the termination.

(2) For the purpose of calculating the number of employees employed by the employer at the time applicable under paragraph (1)(b):
   (a) subject to paragraph (b) of this subsection, all employees employed by the employer at that time are to be counted, including:
       (i) the employee whose employment is being terminated;
       and
       (ii) any other employee of the employer whose employment is also being terminated; but
   (b) a casual employee is not to be counted unless the casual employee has, immediately before that time, been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months.
(3) For the purpose of calculating the number of employees employed by the employer at the time applicable under paragraph (1)(b), related bodies corporate (within the meaning of section 50 of the Corporations Act 2001) are taken to be one entity.

63 Transmission of business and redundancy pay

Transferring employee

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

Employee who rejects offer of employment with new employer

(2) Section 60 does not apply to an employee in a business being transferred if he or she rejects an offer of employment with the new employer:

(a) on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the employee’s terms and conditions of employment with the old employer immediately before the termination of that employment; and

(b) recognising the employee’s service with an old employer in the business (whether or not the old employer was previously a new employer in connection with the business).

(3) On application by the employee, Fair Work Australia may, if satisfied that subsection (2) operates unfairly to him or her, determine that the old employer must pay the employee a specified amount of redundancy pay. The amount must not exceed his or her entitlement under section 60 apart from this section.

(4) The determination has effect according to its terms.
Subdivision C—Limits on scope of this Division

64 Limits on scope of this Division

Employees not covered by this Division

(1) This Division does not apply to any of the following employees:
   (a) an employee employed for a specified period of time or for a specified task;
   (b) an employee serving a period of probation, or a qualifying period of employment, that is determined in advance and is of a duration prescribed by the regulations;
   (c) an employee whose employment is terminated because of serious misconduct;
   (d) a casual employee;
   (e) a seasonal employee;
   (f) a trainee (other than an apprentice) to whom a training arrangement applies;
   (g) an employee prescribed by the regulations as an employee to whom this Division does not apply.

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

Other employees not covered by notice of termination provisions

(3) Subdivision A does not apply to:
   (a) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or
   (b) a daily hire employee working in the meat industry in connection with the slaughter of livestock; or
   (c) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors; or
Section 64

Notice of termination and redundancy pay  Division 10

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

Other employees not covered by redundancy pay provisions

(4) Subdivision B does not apply to:
   (a) an employee who is an apprentice; or
   (b) an employee covered by a modern award that includes an industry-specific redundancy scheme; or
   (c) an employee prescribed by the regulations as an employee to whom that Subdivision does not apply.
Division 11—Fair Work Information Statement

65 Fair Work Australia to publish statement

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

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

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

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

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

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

66 Giving new employees the Fair Work Information Statement

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

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

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