

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130 - award review

FAMILY LEAVE (QUEENSLAND PUBLIC SECTOR) AWARD - STATE 2004

(Matter A/2010/113)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

10 April 2012

AWARD REVIEW

After reviewing the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 10 April 2012.

FAMILY LEAVE (QUEENSLAND PUBLIC SECTOR) AWARD - STATE 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Family Leave (Queensland Public Sector) Award - State 2012.

1.2 Arrangement

Subject Matter Clause No.

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1.3 Award coverage

1.3.1 Except as provided for in clause 1.3.2, this Award applies to all Queensland public sector employees who are subject to the *Industrial Relations Act 1999*.

1.3.2 This Award does not apply to:

- (a) Brisbane City Council including Brisbane City Council entities;
- (b) Queensland Local Government including Local Government entities;
- (c) P & C Associations under the *Education (General Provisions) Act 2006*;
- (d) Distributor-retailers established under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*;
- (e) South East Queensland Water Grid Manager;
- (f) South East Queensland Bulk Water Transport Authority;
- (g) South East Queensland Bulk Water Supply Authority;
- (h) South Bank Employing Office;
- (i) Tourism Queensland Employing Office; and
- (j) Queensland Competition Authority.

1.4 Date of operation

This Award takes effect from 10 April 2012.

1.5 Award posting

A true copy of this Award shall be exhibited in a noticeable and convenient place on the premises of the employer so as to be readily available for employees to read.

1.6 Grievance process

In the event of any dispute arising in connection with any part of this Award, such a dispute shall be processed in accordance with the dispute settling provisions of the parent award.

PART 2 - GENERAL PROVISIONS**2.1 Definitions**

2.1.1 "Adoption agency" - means the department of government or other body empowered by law to make an adoption order.

2.1.2 "Adoption leave" - means long adoption leave or short adoption leave.

2.1.3 "Adoption order" - means an adoption order under the *Adoption Act 2009* and includes an order that is taken under that Act to have the same effect as an adoption order.

- 2.1.4 "Child" - under the provisions of this Award, means:
- (a) in relation to maternity and spousal leave:
 - (i) a child of an employee; or
 - (ii) a child of an employee's spouse;
 - (iii) who is under 1 year of age; and
 - (b) in relation to adoption leave:
 - (i) a child who is under the age of 5 years who is adopted by an employee; or
 - (ii) a child placed with the employee and whom the employee has applied to adopt other than a child who:
 - (A) has turned 5 years of age; or
 - (B) is a child or stepchild of the employee or the employee's spouse; or
 - (C) has continuously resided with the employee for a period of 6 months before the day the employee applies for adoption leave; and
 - (c) in relation to surrogacy leave - a child born as a result of a surrogacy arrangement.
- 2.1.5 "Former position" - under the provisions of this Award, means a position that an employee was appointed to immediately before the employee started parental leave or started part-time employment under an agreement under Part 8 of this Award.
- 2.1.6 "Long adoption leave" - means leave taken by an employee to enable the employee to be the primary caregiver of an adopted child.
- 2.1.7 "Long spousal leave" - means leave taken by the employee to enable the employee to be the child's primary caregiver.
- 2.1.8 "Long surrogacy leave" means leave taken by an employee to enable the employee to be the primary caregiver of a child born as a result of a surrogacy arrangement.
- 2.1.9 "Maternity leave" means leave that a pregnant employee takes -
- (a) for the birth of her child; or
 - (b) to enable her to be the child's primary caregiver.
- 2.1.10 "Parental leave" - under the provisions of this Award shall include maternity leave, adoption leave, spousal leave or surrogacy leave as contained in Directive "Paid Parental Leave", as issued and amended by the Minister responsible for industrial relations pursuant to the *Public Service Act 2008*.
- 2.1.11 "Paid parental leave directive" - under the provisions of this Award, means Directive "Paid Parental Leave", as issued and amended, from time to time, by the Minister responsible for industrial relations, pursuant to the *Public Service Act 2008* and prescribes the entitlements to parental leave, including maternity leave, spousal , prenatal/pre-adoption, adoption leave and surrogacy leave for Queensland public sector employees.
- 2.1.12 "Primary care giver" - under the provisions of this Award, means a person who assumes the principal role of providing care and attention to a child.
- 2.1.13 "Queensland public sector employees" - under the provisions of this Award, (except as set out in Part 10) means those employees who are covered by Directive "Paid Parental Leave", as issued and amended, from time to time, by the Minister responsible for industrial relations, pursuant to the *Public Service Act 2008*.
- 2.1.14 "Replacement employee" means:
- (a) a person who is specifically employed because an employee (the parent):
 - (i) starts parental leave; or
 - (ii) is transferred to a safe job under clause 3.2; or

(b) a person replacing an employee who is temporarily promoted or transferred to replace the parent.

2.1.15 "Short adoption leave" means leave taken by the employee at the time of the placement of an adopted child with the employee.

2.1.16 "Short spousal leave" means leave taken by an employee, in connection with the birth of a child of the employee's spouse, at the time of -

(a) the birth of the child; or

(b) the termination of the pregnancy.

2.1.17 "Short surrogacy leave" means leave taken by an employee when a child born as a result of a surrogacy arrangement starts residing with the employee.

2.1.18 "Short term casual employee" - means an employee, other than a long term casual employee.

2.1.19 "Spouse" - of an employee, includes a former spouse of the employee.

2.1.20 "Spousal leave" - means long spousal leave or short spousal leave.

2.1.21 "Surrogacy arrangement" - see the *Surrogacy Act 2010*, section 7.

2.1.22 "Surrogacy leave" - means long surrogacy leave or short surrogacy leave.

2.2 Qualifying period

There is no qualifying period under this Award to access unpaid parental leave.

2.3 Employer's obligation to advise of entitlements

2.3.1 On becoming aware that an employee or an employee's spouse is pregnant, or that an employee is adopting a child or entering into a surrogate arrangement an employer must inform the employee of:

(a) the employee's entitlement to parental leave under this Award; and

(b) the employee's obligations to notify the employer of any matter under this Award.

2.3.2 An employer can not rely on an employee's failure to give a notice or other documents required by this Award.

2.4 Employer's obligation to advise of significant changes at the workplace

2.4.1 This clause applies if an employer decides to implement significant change at a workplace.

2.4.2 The employer must take reasonable action to advise each employee who is absent from the workplace on parental leave about the proposed change before it is implemented.

2.4.3 The advice must inform the employee of the change and any effect it will have on the position the employee held before starting parental leave. Including, for example, the status or level of responsibility attached to the employee's position.

2.4.4 The employer must give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position.

2.5 Employee's obligations to advise employer about particular changes

2.5.1 An employee who is absent on parental leave must advise the employer of any change in the employee's contact details, including any change of address.

Note: Advice given under this clause may be used by an employer for clause 2.4 if a need arises to advise the employee about significant change at the workplace.

2.5.2 An employee, who is absent on parental leave, must also take reasonable steps to advise the employer, as soon as possible, of any significant change affecting the following:

(a) the length of the employee's parental leave;

(b) the date the employee intends to return to work;

(c) an earlier decision to return to work on a full-time basis or to apply to return to work on a part-time basis.

2.6 Spouses not to take parental leave at same time

2.6.1 An employee is not entitled to parental leave, other than short spousal leave, short adoption leave or short surrogacy leave when his or her spouse is on parental leave.

2.6.2 If the employee contravenes clause 2.6.1, the period of parental leave that the employee is entitled to is reduced by the period of parental leave taken by his or her spouse.

2.7 Cancelling parental leave

2.7.1 Parental leave applied for but not started is automatically cancelled if:

(a) the employee withdraws the application for leave by written notice to the employer; or

(b) the pregnancy terminates other than by the birth of a living child (see clause 3.1 Special maternity leave and sick leave); or

(c) the placement of the child with the employee for adoption purposes does not proceed; or

(d) a child does not start residing with the employee under the surrogacy arrangement.

2.7.2 If, while an employee is on parental leave:

(a) the pregnancy terminates other than by the birth of a living child; or

(b) the child in relation to whom the employee is on parental leave dies; or

(c) the placement of the child with the employee for adoption purposes does not proceed or continue; or

(d) the residence of the child with the employee under the surrogacy arrangement does not start or continue;

the employee is entitled to resume work at a time nominated by his or her employer within 2 weeks after the day on which the employee gives his or her employer a written notice stating that the employee intends to resume work and the reason for the resumption.

The employer does not have the right to direct the employee to return to work until such time as the employee has given the above notice.

2.7.3 This clause does not affect an employee's entitlement to special maternity leave or sick leave under clause 3.1.

2.8 Effect on parental leave of ceasing to be the primary caregiver

2.8.1 The employer may notify the employee of the day, at least 4 weeks after the employer gives the notice, on which the employee must return to work if:

(a) during a substantial period, starting on or after the start of an employee's long parental leave, the employee is not the child's primary caregiver; and

(b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary caregiver within a reasonable period.

2.8.2 If the employee returns to work, the employer must cancel the balance of the leave.

2.9 Effect of parental leave on annual leave and long service leave

An employee may take any annual leave or long service leave to which the employee is entitled instead of or together with parental leave as outlined in the relevant clauses on maternity leave, spousal leave, adoption leave and surrogacy leave.

2.10 Replacement employees

The employer must, before a replacement employee starts employment, give the replacement employee a written notice informing the replacement employee of:

(a) the temporary nature of the employment; and

(b) the parent's right to return to work.

2.11 Dismissal because of pregnancy or parental leave

2.11.1 An employer must not dismiss an employee because:

- (a) the employee or employee's spouse is pregnant or has applied to adopt a child; or
- (b) the employee or employee's spouse has given birth to a child or adopted a child; or
- (c) the employee is an intended parent under a surrogacy arrangement or a child has started residing with the employee under a surrogacy arrangement; or
- (d) the employee has applied for, has been granted or is absent on, parental leave.

2.11.2 This clause does not affect any other rights of:

- (a) an employer to dismiss an employee; or
- (b) a dismissed employee.

2.12 Anti-Discrimination

2.12.1 It is the intention of the parties to this Award to prevent and eliminate discrimination as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time which includes:

- (a) discrimination on the basis of sex, relationship status, family responsibilities, pregnancy, breastfeeding, parental status, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, gender identity, sexuality, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

2.12.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 1.6 the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

2.12.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

2.12.4 Clause 2.12.1 will not affect:

- (a) any different treatment which is specifically exempted under the *Anti-Discrimination Act 1991*; or
- (b) an employee, employer or registered organisation, pursuing matters of discrimination, including by application to the Australian Human Rights Commission/Anti-Discrimination Commission of Queensland.

2.13 Reasonable decision making

2.13.1 In deciding whether to agree to an application for an extension of the period of parental leave under this Award or an application to return to work on a part-time basis under this Award or for an employee to work part-time or on a flexible arrangement to meet their family responsibilities, the employer must consider the following:

- (a) the particular circumstances of the employee that give rise to the application, particularly circumstances relating to the employee's role as the child's caregiver;
- (b) the impact refusal of the application might have on the employee and the employee's dependants;
- (c) the effect that agreeing to the application would have on the conduct of the employer's business, including, for example:
 - (i) any additional cost the employer would incur; and
 - (ii) the employer's capacity to reorganise work arrangements; and

- (iii) the availability of competent replacement staff; and
- (iv) any loss of efficiency in the conduct of the employer's business; and
- (v) the impact of the employee's absence or temporary absence on the delivery of customer service.

2.13.2 The employer must not unreasonably refuse an application outlined in clause 2.13.1.

2.13.3 The employer must advise the employee, in writing, of the employer's decision within 14 days after receiving the application.

2.13.4 If the employer refuses the application, the employer must provide the employee with written reasons for refusing the application.

2.14 Continuation of service

The taking of parental leave does not break the continuity of an employee's service or employment.

PART 3 - PREGNANT EMPLOYEES

3.1 Special maternity leave and sick leave

3.1.1 This clause applies if, before an employee starts maternity leave:

- (a) the employee's pregnancy terminates before the expected date of birth, other than by the birth of a living child; or
- (b) the employee suffers illness related to her pregnancy.

3.1.2 For as long as a doctor certifies it to be necessary, the employee is entitled to the following types of leave:

- (a) unpaid leave (special maternity leave); or
- (b) paid sick leave, either instead of, or as well as, special maternity leave.

3.2 Transfer to safe duties

3.2.1 This clause applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.

3.2.2 The assessment of the risk is to be made on the basis of:

- (a) a doctor's certificate given by the employee to the employer; and
- (b) the employer's obligations under the *Work Health and Safety Act 2011*.

3.2.3 The employer must temporarily adjust the employee's working conditions and/or hours of work to avoid exposure to the risk.

3.2.4 If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that:

- (a) will not expose her to the risk; and
- (b) is, as nearly as possible, comparable in status; and
- (c) must not result in a reduction in the employee's hourly rate of pay.

In undertaking a transfer process the employer, prior to making the final decision, must genuinely consult with the employee on the options for transfer to safe duties.

3.2.5 If a transfer is not feasible or can not reasonably be required to be made, the employer must grant the employee maternity leave or any available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to the risk.

3.3 Part-time and flexible work while pregnant

3.3.1 An employee who is pregnant, during the term of her pregnancy until 6 weeks before the expected date of birth

of her child, or lesser period as approved by the employer under clause 4.11.1(a), may request to work part-time or other flexible work arrangements.

3.3.2 Clause 3.3.1 is to be read in conjunction with the provisions dealing with part-time employment in the relevant parent Award.

3.3.3 A provision in an award relevant to employees covered by this Award relating to:

- (a) the limiting of the number of employees who may work part-time; or
- (b) the establishment of quotas relating to the ratio of part-time to full-time employees; or
- (c) the prescribing of minimum or maximum hours a part-time employee may work; or
- (d) a requirement in relation to part-time employment:
 - (i) of consultation with an employee's union; or
 - (ii) that the consent of an employee's union be sought; or
 - (iii) that an employee's union monitor the employment arrangement;

does not apply to part-time employment approved under this Award.

3.3.4 If there is an inconsistency between a provision of this Award and a provision of another award otherwise having application, the provision of this Award prevails to the extent of the inconsistency.

PART 4 - MATERNITY LEAVE

4.1 Entitlement to maternity leave

4.1.1 A pregnant employee is entitled to an unbroken period of up to 52 weeks' unpaid maternity leave:

- (a) for the child's birth; and
- (b) to be the child's primary caregiver.

4.2 Notice requirements for maternity leave

4.2.1 The employee must give the employer:

- (a) at least 10 weeks written notice of intention to take the leave; and
- (b) at least 4 weeks written notice of the dates on which she wants to start and end the leave.

4.2.2 The employee must, before starting the leave, give the employer:

- (a) a doctor's certificate confirming that she is pregnant and the expected date of birth; and
- (b) a statutory declaration by the employee stating the period of any parental leave sought by her spouse; and
- (c) the actual or approximate starting and finishing dates of maternity leave to be taken; and
- (d) a written undertaking not to engage in conduct inconsistent with her terms of employment during the period of approved maternity leave.

4.3 Reasons not to give notice or documents

4.3.1 An employee does not fail to comply with clause 4.2 if the failure was caused by:

- (a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or
- (b) another reason that was reasonable in the circumstances.

4.3.2 However, the employee must give the employer:

- (a) notice of the period of the leave within 2 weeks after the birth; and

(b) in the case of the birth of a living child - a doctor's certificate stating the date on which the child was born.

4.4 Notice of change in situation

If there is a change in:

- (a) the expected date of birth of the child; or
- (b) the starting and finishing dates of the maternity leave;

the employee must notify the employer of the change within 2 weeks after the change.

4.5 When must maternity leave finish

Maternity leave must not extend:

- (a) beyond 1 year after the child was born; or
- (b) if an application for an extension of maternity leave under clause 4.7 is agreed to beyond 2 years after the child was born.

4.6 Duration of maternity leave extended by notice

4.6.1 An employee may extend the period of maternity leave once only by written notice given to the employer at least 14 days:

- (a) before the start of the maternity leave; or
- (b) if the maternity leave has been started before the maternity leave ends.

4.6.2 The notice must state when the extended period of maternity leave ends.

4.6.3 The total period of maternity leave can not be extended under clause 4.6.1 beyond the total period mentioned in clause 4.5(a).

4.7 Duration of maternity leave extended by agreement

4.7.1 A pregnant employee entitled to maternity leave under clause 4.1, or an employee who is taking maternity leave, may apply to the employer for an extension of the maternity leave for an unbroken period of up to 104 weeks in total.

4.7.2 An employee may not make more than 1 application to extend unpaid maternity leave within any 12 month period, unless the employer agrees.

4.8 Employer to give proper consideration to application for extension of maternity leave

In deciding whether to agree to an application for an extension of the period of maternity leave under clause 4.7.1 the employer must give proper consideration to the request in accordance with clause 2.13 of this Award.

4.9 The effect of maternity leave on annual leave and long service leave

4.9.1 An employee may take any annual leave and/or long service leave to which the employee is entitled instead of or together with maternity leave.

4.9.2 The annual leave and/or long service leave must be granted in accordance with the application to the extent of the employee's entitlement.

4.9.3 However, the total period of leave can not extend beyond the total period allowed under clause 4.5.

4.9.4 Any long service leave and annual leave taken during a period of maternity leave is governed by the conditions outlined in the relevant Ministerial Directives dealing with long service leave and recreation leave.

4.10 Minimum period of maternity leave

Subject to clause 4.11, an employee who is pregnant, whether or not she has made application under 4.2 must:

- (a) commence maternity leave at least 6 weeks prior to the expected date of birth of her child; and

(b) remain on maternity leave until at least 6 weeks after the birth of the child.

4.11 Reducing the minimum period of maternity leave

4.11.1 The employer may, at the request of the employee and on receipt of a certificate from a medical practitioner certifying that, in the opinion of the medical practitioner:

- (a) the employee is fit for duty until a specified date, reduce the period mentioned in clause 4.10 (a); or
- (b) the employee is fit to resume duty, reduce the period mentioned in clause 4.10 (b).

4.11.2 If the employer makes a decision under clause 4.11.1 to reduce the period, the approval is of effect until:

- (a) the day specified in the medical certificate; or
- (b) the day 14 days after the day the employer revokes the decision by giving written notice to the employee; or
- (c) the employee commences maternity leave; or
- (d) the day of the employee's confinement; whichever happens first.

PART 5 - SPOUSAL LEAVE

5.1 Entitlement to spousal leave

For the birth of a child of an employee's spouse, the employee is entitled to the following leave:

- (a) an unbroken period of up to 1 week's unpaid short spousal leave;
- (b) a further unbroken period of up to 51 weeks unpaid long spousal leave.

5.2 Notice requirements for spousal leave

5.2.1 The employee must give the employer:

- (a) for long spousal leave, at least 10 weeks' written notice of intention to take the leave; and
- (b) at least 4 weeks' written notice of the dates on which the employee wants to start and end the leave.

5.2.2 The employee must, before starting the leave, give the employer:

- (a) a doctor's certificate confirming that the employee's spouse is pregnant and the expected date of birth; and
- (b) for long spousal leave, a statutory declaration by the employee stating:
 - (i) the period of any maternity leave sought by the employee's spouse; and
 - (ii) the employee is seeking the leave to be the child's primary caregiver; and
 - (iii) a written undertaking that the employee will not engage in conduct inconsistent with terms of employment during a period of parental leave.

5.3 Reasons not to give notice or documents

5.3.1 An employee does not fail to comply with clause 5.2 if the failure was caused by:

- (a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or
- (b) another reason that was reasonable in the circumstances.

5.3.2 However, the employee must give the employer:

- (a) notice of the period of the leave within 2 weeks after the birth; and
- (b) in the case of the birth of a living child, a doctor's certificate stating the date on which the child was born.

5.4 Notice of change in situation

If there is a change in:

- (a) the expected date of birth of the child; or
- (b) the starting and finishing dates of the spousal leave;

the employee must notify the employer of the change within 2 weeks after the change.

5.5 When must spousal leave finish

Spousal leave must not extend:

- (a) beyond 1 year after the child was born; or
- (b) if an application for an extension of spousal leave under clause 5.7 is agreed to beyond 2 years after the child was born.

5.6 Extending a period of spousal leave by notice

5.6.1 An employee may extend the period of spousal leave by written notice given to the employer at least 14 days:

- (a) before the start of the spousal leave; or
- (b) if the spousal leave has been started before the spousal leave ends.

5.6.2 The notice must state when the extended period of spousal leave ends.

5.6.3 The total period of spousal leave can not be extended under this clause beyond the total period mentioned in clause 5.1.

5.7 Extending a period of spousal leave by agreement

5.7.1 An employee is entitled to spousal leave for the birth of a child of the employee's spouse under clause 5.1, or who is taking spousal leave for the birth, may apply to the employer for either or both of the following:

- (a) an extension of the short spousal leave for an unbroken period of up to 8 weeks in total;
- (b) an extension of the long spousal leave for an unbroken period of up to 96 weeks in total if the short spousal leave was extended to eight weeks under clause 5.7.1(a); or
- (c) an extension of the long spousal leave for an unbroken period of up to 103 weeks if the short spousal leave taken was one week under clause 5.1(a).

5.7.2 An employee may not make more than 1 application under clause 5.7 within any 12 month period, unless the employer agrees.

5.8 Employer to give proper consideration to application for extension of spousal leave

In deciding whether to agree to an application for an extension of the period of spousal leave under clause 5.7.1, the employer must give proper consideration to the request in accordance with clause 2.13.

5.9 The effect of spousal leave on annual leave and long service leave

5.9.1 An employee may take any annual leave and/or long service leave to which the employee is entitled instead of or together with spousal leave.

5.9.2 The annual leave and/or long service leave must be granted in accordance with the application to the extent of the employee's entitlement.

5.9.3 However, the total period of leave can not extend beyond the total period allowed under clause 5.5.

5.9.4 Any long service leave and annual leave taken during a period of spousal leave is governed by the conditions outlined in the relevant Ministerial Directives dealing with long service leave and recreation leave.

PART 6 - ADOPTION LEAVE

6.1 Entitlement to adoption leave and pre adoption leave

6.1.1 For the adoption of a child an employee is entitled to the following leave:

- (a) an unbroken period of up to 3 weeks' unpaid short adoption leave;
- (b) a further unbroken period of up to 49 weeks' unpaid long adoption leave to be the primary care giver.

6.1.2 An employee who is seeking to adopt a child is entitled to up to 2 days' unpaid leave to attend compulsory interviews or examinations as part of the adoption procedure. Such leave at the request of the employee may be debited against recreation leave.

6.2 Notice requirements for adoption leave

6.2.1 The employee must give the employer:

- (a) for long adoption leave written notice of any approval to adopt a child at least 10 weeks before the expected date of placement of the child for adoption purposes (the expected placement date); and
- (b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected placement date but, in any case, at least 14 days before starting the leave.

6.2.2 The employee must, before starting the leave, give the employer:

- (a) a statement from an adoption agency of the expected placement date; and
- (b) for long adoption leave a statutory declaration by the employee stating:
 - (i) the period of any adoption leave sought by the employee's spouse; and
 - (ii) the employee is seeking the leave to be the child's primary caregiver.

6.2.3 In this clause adoption agency means an agency, body, office or court, authorised by a Commonwealth or State law to perform functions about adoption.

6.3 Reasons not to give notice or documents

6.3.1 An employee does not fail to comply with clause 6.2 if the failure was caused by:

- (a) the child being placed for adoption before the expected placement date; or
- (b) another reason that was reasonable in the circumstances.

6.3.2 However, the employee must give the employer notice of the period of the leave within 2 weeks after the placement.

6.4 Notice of change in situation

If there is a change in:

- (a) the expected date of adoption; or
- (b) the starting and finishing dates of the adoption leave;

the employee must notify the employer of the change within 2 weeks after the change.

6.5 When must adoption leave finish

Long adoption leave must not extend:

- (a) beyond 1 year after the child was adopted; or
- (b) if an application for an extension of adoption leave under clause 6.7 is agreed to - beyond 2 years after the child was adopted.

6.6 Extending a period of adoption leave by notice

6.6.1 An employee may extend the period of adoption leave by written notice given to the employer at least 14 days:

- (a) before the start of the adoption leave; or
- (b) if the adoption leave has been started, before the adoption leave ends.

6.6.2 The notice must state when the extended period of adoption leave ends.

6.6.3 The total period of adoption leave can not be extended under this clause beyond the total period mentioned in clause 6.5.

6.7 Extending a period of adoption leave by agreement

6.7.1 An employee entitled to adoption leave for the adoption of a child under clause 6.1 or who is taking adoption leave for the adoption, may apply to the employer for either or both of the following:

- (a) an extension of the short adoption leave for an unbroken period of up to 8 weeks in total;
- (b) an extension of the long adoption leave for an unbroken period of up to 96 weeks in total if the short adoption leave was extended to eight weeks under clause 6.7.1(a); or
- (c) an extension of the long adoption leave for an unbroken period of up to 101 weeks if the short adoption leave taken was three weeks under clause 6.1.1(a).

6.7.2 An employee may not make more than 1 application for an extension for long adoption leave under clause 6.7 within any 12 month period, unless the employer agrees.

6.8 Employer to give proper consideration to application for extension of adoption leave

In deciding whether to agree to an application for an extension of the period of adoption leave under clause 6.7.1, the employer must give proper consideration to the request in accordance with clause 2.13 of this Award.

6.9 The effect of adoption leave on annual leave and long service leave

6.9.1 An employee may take any annual leave and/or long service leave to which the employee is entitled instead of or together with adoption leave.

6.9.2 The annual leave and/or long service leave must be granted in accordance with the application to the extent of the employee's entitlement.

6.9.3 However, the total period of leave can not extend beyond the total period allowed under clause 6.5.

6.9.4 Any long service leave and annual leave taken during a period of adoption leave is governed by the conditions outlined in the relevant Ministerial Directives dealing with long service leave and recreation leave.

PART 7 - SURROGACY LEAVE

7.1 Entitlement to surrogacy leave and pre-surrogacy leave

7.1.1 For the surrogacy of a child an employee is entitled to the following leave:

- (a) an unbroken period of up to 1 week's unpaid short surrogacy leave;
- (b) a further unbroken period of up to 51 weeks' unpaid long surrogacy leave to be the primary care giver.

7.1.2 An employee who is an intended parent under a surrogacy arrangement is entitled to up to 2 days unpaid leave to attend compulsory interviews or court hearings associated with the surrogacy arrangement.

7.2 Notice requirements for surrogacy leave

7.2.1 The employee must give the employer:

- (a) for long surrogacy leave written notice of intention to take the leave at least 10 weeks before the expected date when a child is to start residing with the employee under the surrogacy arrangement (the expected residence date); and
- (b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected residence date but, in any case, at least 14 days before starting the leave.

7.2.2 The employee must, before starting the leave, give the employer:

(a) a statutory declaration stating:

(i) the employee is the intended parent under a surrogacy arrangement; and

(ii) the expected residence date; and

(b) for long surrogacy leave a statutory declaration by the employee stating:

(I) the period of surrogacy leave sought by the employee; and

(ii) the period of any surrogacy leave sought by the employee's spouse; and

(iii) the employee is seeking the leave to be the child's primary caregiver.

7.3 Reasons not to give notice or documents

7.3.1 An employee does not fail to comply with clause 7.2 if the failure was caused by:

(a) the child starting to reside with the employee before the expected residence date; or

(b) another reason that was reasonable in the circumstances.

7.3.2 However, the employee must give the employer notice of the period of the leave within 2 weeks after the placement.

7.4 Notice of change in situation

If there is a change in:

(a) the expected date of surrogacy; or

(b) the starting and finishing dates of the surrogacy leave;

the employee must notify the employer of the change within 2 weeks after the change.

7.5 When must surrogacy leave finish

Long surrogacy leave must not extend:

(a) beyond 1 year after the child started residing with the employee under the surrogacy arrangement; or

(b) if an application for an extension of surrogacy leave under clause 7.7 is agreed to beyond 2 years after the child started residing with the employee under the surrogacy arrangement.

7.6 Extending a period of surrogacy leave by notice

7.6.1 An employee may extend the period of surrogacy leave by written notice given to the employer at least 14 days:

(a) before the start of the surrogacy leave; or

(b) if the surrogacy leave has been started, before the surrogacy leave ends.

7.6.2 The notice must state when the extended period of surrogacy leave ends.

7.6.3 The total period of surrogacy leave can not be extended under this clause beyond the total period mentioned in clause 7.5.

7.7 Extending a period of surrogacy leave by agreement

7.7.1 An employee entitled to parental leave who is taking surrogacy leave under clause 7.1 may apply to the employer for either or both of the following:

(a) an extension of the short surrogacy leave for an unbroken period of up to 8 weeks in total;

(b) an extension of the long surrogacy leave for an unbroken period of up to 96 weeks in total if the short spousal leave was extended to eight weeks under clause 7.7.1(a); or

(c) an extension of the long surrogacy leave for an unbroken period of up to 101 weeks if the short surrogacy leave taken was one week under clause 7.1.1(a).

7.7.2 An employee may not make more than 1 application for an extension of long adoption leave under clause 7.7 within any 12 month period, unless the employer agrees.

7.8 Employer to give proper consideration to application for extension of surrogacy leave

In deciding whether to agree to an application for an extension of the period of surrogacy leave under clause 7.7.1 the employer must give proper consideration to the request in accordance with clause 2.13 of this Award.

7.9 The effect of surrogacy leave on annual leave and long service leave

7.9.1 An employee may take any annual leave and/or long service leave to which the employee is entitled instead of or together with surrogacy leave.

7.9.2 The annual leave or long service leave must be granted in accordance with the application to the extent of the employee's entitlement.

7.9.3 However, the total period of leave can not extend beyond the total period allowed under clause 7.5.

7.9.4 Any long service leave and annual leave taken during a period of surrogacy leave is governed by the conditions outlined in the relevant Ministerial Directives dealing with long service leave and recreation leave.

PART 8 - RESUMPTION OF DUTY

8.1 Shortening a period of parental leave

If the employer agrees, an employee may shorten parental leave by written notice given to the employer at least 14 days before the employee wants to return to work.

8.2 Return to work from parental leave

8.2.1 An employee on parental leave, other than an employee whose application under clause 8.1 is approved, must give the employer 4 weeks written notice of the employee's intention to return to work.

8.2.2 Subject to clause 8.3.1, an employee returning to full-time duty after a period of parental leave is to be deployed to the employee's former position.

8.2.3 An employee mentioned in clause 8.2.2 may be deployed in a different office or location in the same department or sub-department at the same centre and at the same level as the employee's former position, if:

(a) the employee has taken a period of parental leave of more than 104 weeks; or

(b) the former position of the employee no longer exists.

8.3 Part-time work

8.3.1 An employee who is on parental leave or who is the parent of a child may apply to the employer to return to work on a part-time basis.

8.3.2 An application mentioned in clause 8.3.1 for part-time work must:

(a) be in writing; and

(b) be made:

(i) for an application to return to work on a part-time basis after parental leave at least 7 weeks before the parental leave period ends; or

(ii) for an application to work part-time in place of current work arrangements at least 7 weeks prior to the requested transition; and

(c) state that it is an application for return to work on a part-time basis or transition to work on a part-time basis under clause 8.3; and

(d) state the start and end dates of the part-time arrangement being applied for; and

- (e) state the impact refusal of the application might have on the employee and the employee's dependants; and
- (f) be accompanied by a statutory declaration by the employee stating that the employee is seeking to work on a part-time basis so the employee can continue to be the child's primary caregiver when not at work.

8.3.3 The period in relation to which an application under clause 8.3 may be made can not extend beyond the day the child in relation to whom parental leave was taken is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.

8.3.4 Before an employee begins part-time work approved under clause 8.3.1, the employee and the employer must agree on the following matters:

- (a) that the employee may work part-time;
- (b) the hours to be worked by the employee including the days on which the employee is to work and the commencing times of work;
- (c) the nature of the duties to be performed;
- (d) the level of remuneration applying to the duties; and
- (e) the period the employee is to work part-time.

8.3.5 The employee and the employer must record the terms of their agreement in writing which must be signed by both parties.

8.3.6 The agreement is to be retained by the employer and a copy is to be given to the employee.

8.3.7 The terms of the agreement may be varied by further agreement between the parties.

8.3.8 The work to be performed by the employee under the agreed part-time arrangement, need not be the work performed by the employee in the employee's former position.

8.3.9 The employee may, by agreement between the employee and the employer, work more hours than those recorded in the agreement.

8.4 Award to prevail

8.4.1 This clause is to be read in conjunction with the provisions dealing with part-time employment in an award or certified agreement relevant to the employees covered by this Award.

8.4.2 A provision in an award or certified agreement relevant to employees covered by this Award relating to:

- (a) the limiting of the number of employees who may work part-time; or
- (b) the establishment of quotas relating to the ratio of part-time to full-time employees; or
- (c) the prescribing of minimum or maximum hours a part-time employee may work; or
- (d) a requirement in relation to part-time employment:
 - (i) of consultation with an employee's union; or
 - (ii) that the consent of an employee's union be sought; or
 - (iii) that an employee's union monitor the employment arrangement;

does not apply to part-time employment approved under this Award.

8.4.3 If there is an inconsistency between a provision of this Award and a provision of another award or certified agreement otherwise having application, the provision of this Award prevails to the extent of the inconsistency.

8.5 Returning to previous employment status after part-time work

8.5.1 An employee returning to full-time duty after one period of part-time employment approved under clause 8.3 is to be deployed to the employee's former position.

8.5.2 An employee mentioned in clause 8.3.1 may be deployed in a different position at the same level if:

- (a) the employee has worked part-time in relation to the same child in excess of two years; or
- (b) the employee has worked more than one period of part-time work in relation to the same child.

8.5.3 An employee mentioned in clause 8.3.1 may be deployed in a different office or location in the same department or sub-department at the same centre and at the same level as the employee's former position, if the employee's former position no longer exists.

PART 9 - CARER'S LEAVE

9.1 General provisions for carer's leave

9.1.1 An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this clause, any sick leave entitlement to provide care and support for such persons when:

- (a) they are ill; or
- (b) an unexpected emergency arises (e.g. unexpected failure of child care arrangements, a situation where a person is experiencing domestic violence or a close down of a school).

9.1.2 The entitlement to use sick leave in accordance with this clause is subject to:

- (a) the employee being responsible for the care of the person concerned; and
- (b) the person concerned being either:

- (i) a member of the employee's immediate family; or

- (ii) a member of the employee's household; and

the term "immediate family" includes:

- (i) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; and

- (ii) a child (including an adult child, an adopted child, a foster child, a step child or an exnuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

9.1.3 If an employee is taking carer's leave to care for and support a member of the employee's immediate family or household who is ill, the employee must, if required by the employer, produce a doctor's certificate or statutory declaration evidencing that the member is ill with an illness requiring care by another.

9.1.4 An employee must, if practicable, give the employer:

- (a) notice of their intention to take carer's leave before taking the leave; and
- (b) the name of the person requiring care and the person's relationship to the employee; and
- (c) the reason for taking carer's leave; and
- (d) the period that the employee estimates he or she will be absent on carer's leave; and
- (e) if the reason for taking carer's leave is because an unexpected emergency has arisen, the nature of the emergency.

9.1.5 If it is not practicable for the employee to notify the employer of the intention to take carer's leave before taking the leave, the employee must notify the employer at the first reasonable opportunity.

9.1.6 An employee can not take carer's leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.

9.1.7 Carer's leave may be taken for part of a day.

9.2 Use of unpaid leave for carer's leave

9.2.1 If the employee has exhausted his or her entitlement under clause 9.1.1, the employee may take unpaid carer's leave each time the employee needs to care for and support members of the employee's immediate family or household when:

- (a) they are ill; or
- (b) because an unexpected emergency arises.

9.3 Use of annual leave for carer's leave

An employee may elect, with the consent of the employer, to take annual leave for carer's leave purposes at a time or times agreed between the parties.

9.4 Time off in lieu of payment for overtime

9.4.1 An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer to discharge a responsibility to care for or support a person within clause 9.1.1 whether sick or not.

9.4.2 Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is, an hour for each hour worked.

9.4.3 An employer shall, if requested by an employee provide payment, at the rate provided for the payment of overtime in the Award, for any overtime worked under clause 9.4.1 of this clause where such time has not been taken within four weeks of accrual and requested by the employee.

9.4.4 This clause does not limit or detract from any provision in an award or certified agreement dealing with time off in lieu of overtime which existed on or before the making of this Award.

9.5 Make-up time

An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided for in the parent Award, at ordinary rates.

9.6 Long-term casual employees entitlement to carer's leave

9.6.1 A long-term casual employee is entitled to 10 days unpaid carer's leave in each year to care for and support members of the employee's immediate family or household:

- (a) when they are ill; or
- (b) because an unexpected emergency arises or
- (c) because of the birth of a child.

9.6.2 The long-term casual employee may take additional unpaid carer's leave if the employer agrees.

9.6.3 A long-term casual employee can not take carer's leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.

9.6.4 The employer must not fail to re-engage a long-term casual employee only because the long-term casual employee has taken carer's leave under this clause.

9.6.5 However, the rights of an employer not to re-engage a long-term casual employee are not otherwise affected.

9.6.6 A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under Part 9.

9.7 Short-term casual employees entitlement to carer's leave

9.7.1 A short-term casual employee is entitled to leave work or to be unavailable to attend work for up to 2 days each time the employee needs to care for and support members of the employee's immediate family or household;

- (a) when they are ill; or
- (b) because an unexpected emergency arises; or

(c) because of the birth of a child.

9.7.2 The short-term casual employee may leave work or be unavailable to attend work for reasons mentioned in clause 9.7.1 for additional periods if the employer agrees.

9.7.3 A short-term casual employee can not take carer's leave if another person has taken leave to care for the same person unless there are special circumstances requiring more than 1 person to care for the person.

9.7.4 The employer must not fail to re-engage a short-term casual employee only because the short-term casual employee has taken carer's leave under this clause.

9.7.5 However, the rights of an employer not to re-engage a short-term casual employee are not otherwise affected.

9.7.6 Leave taken under clause 9.7 is unpaid.

PART 10 - BEREAVEMENT LEAVE

10.1 General provisions for bereavement leave

10.1. An employee, other than a long-term or short-term casual employee is entitled to:

(a) at least 2 days bereavement leave on full pay on the death of a member of the person's immediate family or household; and

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death, an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

10.1.2 The employee must give the employer a copy of the funeral notice or other evidence of the death if the employer reasonably requires.

10.1.3 For the purposes of Part 10 "family" means:

(a) a spouse (including a former spouse, a de facto spouse and a former de facto spouse, spouse of the same sex) of the employee;

(b) a child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an exnuptial child), parent, grandparent, grandchild, sibling of the employee or spouse of the employee.

10.2 Long-term and short-term casual employees

10.2.1 A long-term casual employee is entitled to:

(a) at least 2 days' unpaid bereavement leave on the death of a member of the person's immediate family or household; and

(b) If the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death, an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

10.2.2 A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under Part 10.

10.2.3 A short-term casual employee is entitled to:

(a) be unavailable to attend work for up to 2 days on unpaid bereavement leave on the death of a member of the person's immediate family or household ; and

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death, an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

10.2.4 The employer must not fail to re-engage a casual employee only because the casual employee has taken bereavement leave under this clause.

10.2.5 However, the rights of an employer not to re-engage a casual employee are not otherwise affected.

10.3 Unpaid leave

An employee, with the consent of the employer, may apply for additional unpaid leave when a member of the employee's immediate family or household dies and the period of bereavement leave provided above is insufficient.

10.4 Other conditions

Other conditions of bereavement leave which apply to an employee are found in the Ministerial Directive dealing with bereavement leave.

PART 11 - CULTURAL LEAVE

11.1 General provisions for cultural leave

11.1.1 An employee who is required by Aboriginal tradition or Torres Strait Islander custom to attend an Aboriginal or Torres Strait Islander ceremony may take up to 5 days unpaid cultural leave in each year if the employer agrees.

11.1.2 The employer must not unreasonably refuse the employee's application to access cultural leave.

11.1.3 In considering an employee's request to access cultural leave, the employer must consider the following:

- (a) the employer's capacity to reorganise work arrangements to accommodate the employee's request;
- (b) the impact of the employee's absence on the delivery of customer service;
- (c) the employee's circumstances; and
- (d) the impact on the employee, including the employee's ability to balance his or her work and family responsibilities, if the employer was to reject an employee's request.

11.1.4 The employee must, if practicable, give the employer:

- (a) reasonable notice of the intention to take cultural leave before taking the leave;
- (b) the reason for taking the leave; and
- (c) the period that the employee estimates the employee will be absent.

11.1.5 If it is not practicable for the employee to give the notice before taking the leave, the employee must give the employer notice of the matters in clause 11.1.4(b) and (c) at the first opportunity.

11.1.6 Section 40A(6) of the *Industrial Relations Act 1999* declares that the cultural leave provided under section 40A is a welfare measure for the purposes of the *Anti-Discrimination Act 1991*, section 104.

Dated 10 April 2012.

By the Commission,
[L.S.] G.D. SAVILL,
Industrial Registrar.

Operative Date: 10 April 2012