

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 130 - award review

FAMILY LEAVE AWARD 2003

(Matter A/2010/112)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

21 June 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the above Award as required by s. 130 of the *Industrial Relations Act 1999*, this Commission orders that the Award be repealed and the following Award be made as from 21 June 2012.

FAMILY LEAVE AWARD 2012

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Family Leave Award - State 2012.

1.2 Arrangement

| Subject Matter | Clause No. |
|---|------------|
| PART 1 - APPLICATION AND OPERATION | |
| Title | 1.1 |
| Arrangement | 1.2 |
| Award coverage | 1.3 |
| Date of operation | 1.4 |
| Award posting | 1.5 |
| Grievance process | 1.6 |
| Anti-Discrimination | 1.7 |
| PART 2 - GENERAL PROVISIONS | |
| Definitions | 2.1 |
| PART 3 - PARENTAL LEAVE ENTITLEMENTS | |
| Employer's obligation to advise of entitlement | 3.1 |
| Eligibility for parental leave entitlement | 3.2 |
| Parental leave entitlements | 3.3 |
| Spouses of employee not permitted to take parental leave at same time as employee | 3.4 |
| Cancelling parental leave | 3.5 |
| Taking other forms of leave with parental leave | 3.6 |
| Extending a period of parental leave by notice | 3.7 |
| Shortening a period of parental leave | 3.8 |
| Interruption of parental leave by return to work | 3.9 |
| Continuation of service | 3.10 |
| Effect on parental leave of ceasing to be the primary caregiver | 3.11 |
| PART 4 - NOTIFICATION AND DOCUMENTATION | |
| Notices and documentation - maternity leave | 4.1 |
| Notices and documentation - spousal leave | 4.2 |
| Notices and documentation - adoption leave | 4.3 |

| Subject Matter | Clause No. |
|---|------------|
| Notices and documentation - surrogacy leave | 4.4 |
| Reasons for not providing notices or documentation to employer | 4.6 |
| Notice of change to employees situation | 4.7 |
| PART 5 - SPECIAL MATERNITY, ADOPTION AND SURROGACY LEAVE | |
| Special maternity leave and sick leave | 5.1 |
| Transfer to a safe job | 5.2 |
| Special adoption leave | 5.3 |
| Special surrogacy leave | 5.4 |
| PART 6 - WORKPLACE CHANGE DURING PARENTAL LEAVE | |
| Employer's obligation to advise employee of significant changes at the workplace | 6.1 |
| Employer's obligation to advise replacement employees | 6.2 |
| Employee's obligation to advise employer about particular changes | 6.3 |
| Right to return to work after parental leave | 6.4 |
| Dismissal because of pregnancy or parental leave | 6.5 |
| PART 7 - EMPLOYEE RIGHT TO REQUEST PARENTAL LEAVE EXTENSION AND PART TIME WORK | |
| Request for extension of parental leave entitlement beyond initial one (1) year | 7.1 |
| Request to work part-time upon return to work | 7.2 |
| Employee requirements for request to extend parental leave or work part-time | 7.3 |
| Employer obligation to give proper consideration to request to extend parental leave or part-time | 7.4 |
| Part-time work agreement | 7.5 |
| Return to former position after part-time work | 7.6 |
| PART 8 - CARER'S LEAVE | |
| Carer's leave entitlement | 8.1 |
| Annual leave for caring purposes | 8.2 |
| Time off in lieu of payment for overtime for caring purposes | 8.3 |
| Make-up time | 8.4 |
| Carer's leave entitlement - long-term casual employees | 8.5 |
| Carer's leave entitlement - short-term casual employees | 8.6 |
| Employee's obligation to provide supporting information | 8.7 |
| PART 9 - BEREAVEMENT LEAVE | |
| Bereavement leave entitlement | 9.1 |
| PART 10 - CULTURAL LEAVE | |
| Cultural leave entitlement | 10.1 |

PART 1 - APPLICATION AND OPERATION

1.3 Award coverage

- 1.3.1 This Award applies to all employees who are subject to the *Industrial Relations Act 1999* and employed by any of the following employers:
- (a) Brisbane City Council including Brisbane City Council entities;
 - (b) Queensland Local Governments and 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.

1.3.2 This award shall not apply to any employee subject to the *Family Leave (Queensland Public Sector) Award - State 2012*.

1.4 Date of operation

This Award takes effect from 21 June 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.

1.7 Anti-Discrimination

1.7.1 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.

1.7.2 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.

1.7.3 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.

1.7.4 Clause 1.7 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 and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

PART 2 - DEFINITIONS

2.1 Definitions

- 2.1.1 "Adoption leave" means short adoption leave or long adoption leave.
- 2.1.2 "Adoption agency" - means any agency, body, office or court, authorised by a Commonwealth or State law to perform functions about adoption.
- 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) for maternity and spousal leave:
 - (i) a child of an employee; or
 - (ii) a child of an employee's spouse; and
 - (iii) who is under 1 year of age; or
 - (b) for adoption leave - a child who is under the age of five (5) years, but does not include a child who;
 - (i) has previously lived continuously with the employee for a period of at least 6 months; or
 - (ii) is the child or stepchild of the employee or employee's spouse; or
 - (c) for surrogacy leave - a child born as a result of a surrogacy arrangement.
- 2.1.5 "Expected date of placement" - in relation to the adoption of a child by an employee, means the earlier of the following days:
- (a) the expected day on which the employee first takes custody of the child for the adoption;
 - (b) the expected day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- 2.1.6 "Intended parent", for a surrogacy arrangement, is that defined by the *Surrogacy Act 2010*, section 9.
- 2.1.7 "Long adoption leave" means leave taken by an employee to enable the employee to be the primary caregiver of an adopted child.
- 2.1.8 "Long parental leave" means:
- (a) for a pregnant employee-maternity leave; or
 - (b) for an employee whose spouse gives birth - leave taken by the employee to enable the employee to be the child's primary caregiver.
- 2.1.9 "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.
- 2.1.10 "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.
- 2.1.11 "Parental leave" - means long and short maternity leave, long and short spousal leave, long and short adoption leave or long or short surrogacy leave, but excludes special maternity, special adoption and special surrogacy leave.
- 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.
- 2.2.13 "Short adoption leave" means leave taken by an employee at the time of the placement of an adopted child of the employee's spouse.
- 2.2.14 "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 other termination of the pregnancy.

- 2.1.15 "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.
- 2.1.16 "Long term casual employee" - means 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 (1) year immediately before the employee seeks to access an entitlement under this Award.
- 2.1.17 "Short term casual employee"- means a casual employee, other than a long-term casual employee.
- 2.1.18 "Spouse" - of an employee, includes a de facto spouse whether of the same sex as the employee or not, and includes a former spouse of the employee.
- 2.1.19 "Surrogacy arrangement" - see the *Surrogacy Act 2010* (Qld), section 7.
- 2.1.20 "Surrogacy leave" - means long surrogacy leave or short surrogacy leave.

PART 3 - PARENTAL LEAVE ENTITLEMENTS

3.1 Employer's obligation to advise of entitlements

- 3.1.1 On becoming aware that an employee or an employee's spouse is pregnant, or that an employee or their spouse 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.
- 3.1.2 An employer cannot rely on an employee's failure to give a notice or other documents required by this Award unless the employer can first establish that clause 3.1.1 has been complied with.

3.2 Entitlement to Parental leave

- 3.2.1 Clause 3.3 details the parental leave entitlement of an "employee" who is:
- (a) not a long-term casual employee and who has had at least twelve (12) months continuous service with the employer; or
 - (b) a long-term casual employee.

3.3 Parental leave entitlements for an employee referred to in clause 3.2

3.3.1 Maternity Leave

A pregnant employee is entitled to an unbroken period of up to fifty two (52) weeks unpaid maternity leave:

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

3.3.2 Short and Long Spousal Leave

For the birth of a child of an employee's spouse, an 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 after the birth of the child in order to be the child's primary care giver.

3.3.3 Short and Long Adoption Leave

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

- (a) an unbroken period of up to three (3) weeks unpaid short adoption leave;
- (b) a further unbroken period of up to forty nine (49) weeks unpaid long adoption leave if the employee will be the child's primary care giver.

3.3.4 *Short and Long Surrogacy Leave*

An employee who is an intended parent under a surrogacy arrangement is entitled to the following leave:

- (a) an unbroken period of up to one (1) week's unpaid short surrogacy leave;
- (b) a further unbroken period of up to fifty one (51) weeks unpaid long surrogacy leave if the employee will be the child's primary caregiver.

3.3.5 *Parental Leave Generally*

Parental leave referred to in 3.3 must not extend:

- (a) Beyond one (1) year after the child was born, adopted or started residing with the employee under the surrogacy arrangement, or
- (b) If an application for an extension of parental leave under Part 7 is agreed to, then beyond two (2) years after the child was born, adopted or started residing with the employee under the surrogacy arrangement.

3.4 Spouse of employee not permitted to take parental leave at same time as employee

3.4.1 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.

3.4.2 If the employee contravenes clause 3.4.1, the period of parental leave that the employee is entitled to is reduced by the period of leave taken by his or her spouse.

3.5 Cancelling parental leave

3.5.1 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; 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.

3.5.2 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 two (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.

3.5.3 This clause does not affect an employee's entitlement to special maternity leave or sick leave under clause 5.1.

3.6 Taking other forms of leave with parental leave

3.6.1 An employee may take any other form of paid leave to which the employee is entitled instead of or together with parental leave.

3.6.2 However, the total amount of leave referred to in clause 3.6.1 must not, in aggregate, extend beyond the equivalent total period of parental leave provided under clause 3.3.

3.6.3 While the employee is on unpaid parental leave, the employee is not entitled to paid sick leave or other paid leave, unless the employer agrees.

3.6.4 In this clause "other form of paid leave" means any paid leave to which the employee is entitled pursuant to a law, industrial instrument or employment contract and includes annual and long service leave.

3.7 Extending a period of parental leave by notice

3.7.1 An employee may extend an initial period of parental leave once only by written notice given to the employer at least fourteen (14) days:

(a) before the start of the initial period of parental leave; or

(b) if the initial period of parental leave has started, before the parental leave ends.

3.7.2 The notice must state when the extended period of parental leave ends.

3.7.3 The total period of parental leave can not be extended under clause 3.7 beyond the total period of parental leave referred to under 3.3.5 (a).

3.7.4 The process for requesting an extension to parental leave in excess of that referred to under clause 3.3.5 (a) is referred to in Part 7.

3.8 Shortening a period of parental leave

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

3.9 Interruption of parental leave by return to work

3.9.1 An employee and employer may agree that the employee break the period of parental leave by returning to work for the employer, whether on a full-time, part-time or casual basis.

3.9.2 However, the period of parental leave can not be extended by the return to work beyond the total period provided under clause 3.3.5.

3.10 Continuation of service

3.10.1 Absence on parental leave shall not break the continuity of service of an employee, but shall not be taken into account in calculating the period of service for any purpose under any relevant Award or Certified Agreement, unless the Certified Agreement provides otherwise.

3.10.2 Notwithstanding clause 3.10.1 the *Industrial Relations Act 1999* (Qld) s11 (5) (a) shall be taken into account in calculating and employees service for the purpose of an entitlement to annual leave whilst on a period of parental leave, but only up to a maximum of 3 months.

3.10.3 Provided that where an employee is absent on a period of approved parental leave does not return to the service of the employer in some capacity following the completion of a continuous period of parental leave, and thereafter remains in the service of the employer for a continuous period of 3 months, such employee shall forfeit the right to have any part of the period of parental leave taken into account in calculating an entitlement to or in lieu of annual leave pursuant to of the *Industrial Relations Act 1999* (Qld) s11 (5) (a).

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

3.11.1 This clause applies 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.

3.11.2 The employer may notify the employee of the day, at least four (4) weeks after the employer gives the notice, on which the employee must return to work.

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

PART 4 - NOTIFICATION AND DOCUMENTATION

4.1 Notices and documentation - maternity leave

4.1.1 Clause 4.1 applies if a pregnant employee wants to take maternity leave.

4.1.2 The employee must give the employer:

(a) at least ten (10) weeks written notice of intention to take the leave; and

(b) at least four (4) weeks written notice of the dates on which she wants to start and end the leave.

4.1.3 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.

4.2 Notices and documentation - spousal leave

4.2.1 Clause 4.2 applies if an employee wants to take spousal leave.

4.2.2 The employee must give the employer:

(a) for long spousal leave, at least ten (10) weeks written notice of intention to take the leave; and

(b) at least four (4) weeks written notice of the dates on which the employee wants to start and end the leave.

4.2.3 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.

4.3 Notices and documentation - adoption leave

4.3.1 Clause 4.3 applies if an employee wants to take adoption leave.

4.3.2 The employee must give the employer:

(a) for long adoption leave, written notice of any approval to adopt a child at least ten (10) weeks before the expected date of placement of the child for adoption purposes; 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 fourteen (14) days before starting the leave.

4.3.3 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 care giver.

4.4 Notices and documentation - surrogacy leave

4.4.1 Clause 4.4 applies if an employee wants to take surrogacy leave.

4.4.2 The employee must give the employer:

(a) for long surrogacy leave, written notice of intention to take the leave at least ten (10) weeks before the expected date when a child is to start residing with the employee under the surrogacy arrangement; and

(b) at least four (4) weeks written notice of the dates on which the employee wants to start and end the leave.

4.4.3 The employee must, before starting the leave, give the employer a statutory declaration by the employee stating:

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

(b) the expected date when the child is to start residing with the employee; and

(c) for long surrogacy leave:

(i) the period of 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.

4.5 Reasons for not to providing notice or documents to employer

4.5.1 An employee does not fail to comply with clauses 4.1, 4.2, 4.3 or 4.4 if the failure to notify or provide documentation was caused by:

(a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or

(b) the child being placed for adoption before the expected placement date; or

(c) the child starts to reside with the employee before the expected residence date; or

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

4.5.2 However, an employee must give the employer:

(a) notice of period of the leave within two (2) weeks after the birth or placement; 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.

4.6 Notice of change to employees situation

An employee must notify the employer of any change in the information provided pursuant to clauses 4.1, 4.2, 4.3 or 4.4 within 2 weeks after the change.

PART 5 - SPECIAL MATERNITY, ADOPTION AND SURROGACY LEAVE

5.1 Special maternity leave and sick leave

5.1.1 Clause 5.1 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.

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

(a) unpaid (special maternity) leave;

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

5.2 Transfer to a safe job

5.2.1 Clause 5.2 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.

5.2.2 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*.

- 5.2.3 The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.
- 5.2.4 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 remuneration to that of her present work.
- 5.2.5 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.

5.3 Special adoption leave

An employee who is seeking to adopt a child is entitled to up to two (2) days unpaid leave to attend compulsory interviews or examinations as part of the adoption procedure.

5.14 Special surrogacy leave

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

PART 6 - WORKPLACE CHANGE DURING PARENTAL LEAVE

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

- 6.1.1 Clause 6.1 applies if an employer decides to implement significant change at a workplace.
- 6.1.2 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.
- 6.1.3 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.
- 6.1.4 The employer must give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position.

6.2 Employer obligation to advise replacement employees

The employer must, before a replacement employee/s either starts employment, or transfers from another position within the employer's business or undertaking, to fill a short-term vacancy due to another employee commencing parental leave, give the replacement employee a written notice informing the replacement employee of:

- (a) the temporary nature of the employment; and
- (b) that the employee on parental leave, who's position the replacement employee is filling, has right to return to the position being filled at the completion of a period of parental leave.

6.3 Employee's obligations to advise employer about particular changes

- 6.3.1 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.
- 6.3.2 Advice given under clause 6.3.1 may be used by an employer for clause 6.1 if a need arises to advise the employee about significant change at the workplace.
- 6.3.3 An employee, who is absent on parental leave, must also take reasonable steps to advise the employer, as soon as possible, of any 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.

6.4 Right to return to work after parental leave

6.4.1 Clause 6.4 applies to:

(a) an employee who returns to work after a period of parental leave (including an extended period of parental leave agreed to under Part 7); or

(b) a female employee who returns to work after special maternity leave or sick leave under clause 5.1.

6.4.2 The employee is entitled to be employed in:

(a) the position held by the employee immediately before starting parental leave; or

(b) if the employee worked part-time because of the pregnancy before starting maternity leave, the position held by the employee immediately before starting part-time work; or

(c) if the employee was transferred to a safe job under clause 5.2 before starting maternity leave, the position held by the employee immediately before the transfer.

6.4.3 If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.

6.4.4 An employer must make a position to which an employee is entitled available to the employee.

6.4.5 If a long-term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

6.5 Dismissal because of pregnancy or parental leave

6.5.1 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, or is absent on, parental leave.

6.5.2 This clause does not affect any other rights of:

(a) an employer to dismiss an employee; or

(b) a dismissed employee.

PART 7 - EMPLOYEE RIGHT TO REQUEST PARENTAL LEAVE EXTENSION AND PART TIME WORK

7.1 Request for extension of parental leave entitlement beyond initial one (1) year

7.1.1 A pregnant employee entitled to maternity leave under clause 3.3.1, 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 one hundred and four (104) weeks in total.

7.1.2 An employee entitled to spousal leave for the birth of a child of the employee's spouse under 3.3.2, 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 short spousal leave for an unbroken period of up to eight (8) weeks in total;

(b) an extension of long spousal leave for an unbroken period of up to ninety six (96) weeks in total in order to be the child's primary carer.

- 7.1.3 An employee entitled to adoption leave under clause 3.3.3, 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 short adoption leave for a unbroken period of up to eight (8) weeks in total;
 - (b) an extension of long adoption leave for an unbroken period of up to ninety (96) weeks in total in order to be the child's primary carer.
- 7.1.4 An employee entitled to surrogacy leave under clause 3.3.4, or who is taking surrogacy leave, may apply to the employer for either or both of the following:
- (a) an extension of short surrogacy leave for an unbroken period of up to eight (8) weeks in total;
 - (b) an extension of long surrogacy leave for an unbroken period of up to ninety six (96) weeks in order to be the child's primary carer.
- 7.1.5 An employee may not make more than one application under clause 7.1.1; 7.1.2; 7.1.3 or 7.1.4 within any twelve (12) month period unless the employer agrees.

7.2 Request to work part-time upon return to work

- 7.2.1 An employee on parental leave, including an extended period of parental leave under clause 7.1, may request of the employer to return to work on a part-time basis.
- 7.2.2 An employee may not make more than one application under clause 7.2 within any twelve (12) month period, unless the employer agrees.
- 7.2.3 In considering any request by an employee to work part-time under clause 7.4 the work to be performed part-time does not need to be the work performed by the employee in their position preceding the taking of parental leave, but shall be work otherwise performed under the industrial instrument relevant to that employment.

7.3 Employee requirements for requests to extend parental leave or work part-time

- 7.3.1 Any request made pursuant to clauses 7.1 or 7.2 must:
- (a) be in writing; and
 - (b) be made:
 - (i) for a request for an extension to short spousal leave, short adoption leave or short surrogacy leave, at least two (2) business days before the leave ends; or
 - (ii) for an application for an extension of maternity leave, long spousal leave, long adoption leave or long surrogacy leave, at least four (4) weeks before the leave ends; or
 - (iii) for an application to return to work on a part-time basis, at least seven (7) weeks before the leave ends; and
 - (c) state that the request is for either an extension of parental leave under clause 7.1 or to return to work after a period of parental leave on a part-time basis under clause 7.2; and
 - (d) state the dates the extension or return to work on a part-time basis, being applied for is to start and end; and
 - (e) state the impact that a refusal of any request might have on the employee and the employee's dependants; and
 - (f) be accompanied by a statutory declaration by the employee stating:
 - (i) for a request for an extension of maternity leave, long parental leave, long adoption leave or long surrogacy leave, the employee is seeking the extension so the employee can continue to be the child's primary caregiver; or
 - (ii) for an application to return to work on a part-time basis, 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.
- 7.3.2 The period in relation to which a request under clause 7.2 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*.

7.4 Employer obligation to give proper consideration to request to extend parental leave or work part-time

7.4.1 In deciding whether to agree to a request for an extension to the period of parental leave under clause 7.1 or a request to return to work on a part-time basis under clause 7.2, 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 or undertaking, 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.

7.4.2 The employer must not unreasonably refuse a request made under clauses 7.1 or 7.2.

7.4.3 The employer must advise the employee, in writing, of the employer's decision:

- (a) if the request is for an extension of short spousal leave, short adoption leave or short surrogacy leave, as soon as possible after receiving the application but before the short spousal leave, short adoption leave or short surrogacy leave ends; or
- (b) for any other request under clauses 7.1 or 7.2, within 14 days after receiving the request.

7.4.4 If the employer refuses a request made under Part 7, the employer must provide the employee with written reasons for refusing the request.

7.5 Part-time work agreement

7.5.1 Where pursuant to clause 7.4 the employer has agreed to an employee's request to work part-time upon returning from a period of parental leave, before commencing a period of part-time employment, the employee and employer shall have agreed:

- (a) upon the ordinary hours to be worked by the employee, the days upon which they will be worked and commencing times for the work; and
- (b) upon the classification applying to the work to be performed; and
- (c) upon the period of part-time employment.

7.5.2 The terms of the part-time agreement, agreed under subclause 7.5.1 may be amended by consent between the employer and employee.

7.5.3 The employer may request, but not require, an employee to work outside or in excess of the employee's ordinary hours of duty as agreed under clause 7.5.1

7.6 Return to former position after part-time work

7.6.1 An employee who has had at least 12 months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of a first period of part-time employment, but not a second or subsequent periods of part-time employment, has the right to return to his or her former position.

7.6.2 Nothing in clause 7.6.1 shall prevent an employer from permitting the employee to return to his or her former position after second or subsequent periods of part-time employment.

PART 8 - CARER'S LEAVE

8.1 Carer's leave entitlement

- 8.1.1 An employee, other than a short or long-term casual employee, may use up to ten (10) days sick leave on full pay (carer's leave) in each year 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.
- 8.1.2 If the employee has exhausted his or her entitlement under clause 8.1.1, the employee may take up to an additional two (2) days unpaid carer's leave 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.
- 8.1.3 For the purposes of clause 8.1, an example of an "unexpected emergency" may include an unexpected failure of child care arrangements.
- 8.1.4 The employee may take additional unpaid carer's leave if the employer agrees.
- 8.1.5 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 one (1) person to care for the person.
- 8.1.6 Carer's leave may be taken for part of a day.

8.2 Annual leave for caring purposes

- 8.2.1 An employee may elect, with the consent of the employer, to take annual leave not exceeding five (5) days in any calendar year at a time or times agreed between the parties which may be taken in single day periods or parts thereof in any calendar year at a time or times agreed between the parties.
- 8.2.2 Access to annual leave, as prescribed in clause 8.2.1, shall be exclusive of any shutdown period provided for elsewhere under another relevant award applying to the employer and employee.
- 8.2.3 Despite anything contained in another award applying to the employer and employee relating to annual leave, where annual leave is taken pursuant to clause 8.2, the employer and employee may agree to defer payment of annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.

8.3 Time off in lieu of payment for overtime for caring purposes

- 8.3.1 An employee and employer may agree for an employee to take time off in lieu of payment for overtime at a time or times agreed so as to care for or provide to support to a member of the employees immediate family or household.
- 8.3.2 Overtime taken as time off during what would have been the employees ordinary hours shall be paid at the employee ordinary rate and will be based on the equivalent of one hours paid leave for each overtime hour worked.
- 8.3.3 An employer must, if requested by an employee, provide instead of leave, payment to the employee at the equivalent overtime rates applicable to any overtime worked, where time off in lieu of the payment of overtime for caring purposes has not been taken within four (4) weeks of such overtime having been worked by the employee.

8.4 Make-up time

- 8.4.1 An employee (including a shift work employee) and employer may agree for the employee to work "make-up time". For the purposes of clause 8.4 "make-up time" means that the employee takes unpaid time off during the employees normal ordinary hours, and subsequent to that paid time off, at a later date, works additional ordinary hours at the employees ordinary rate (inclusive of any ordinary shift work loading if applicable), equivalent to the ordinary hours taken off by the employee.

8.5 Carer's leave entitlement - long-term casual employees

- 8.5.1 A long-term casual employee is entitled to ten (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.
- 8.5.2 A long-term casual employee may take additional unpaid carer's leave if the employer agrees.
- 8.5.3 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 one (1) person to care for the person.
- 8.5.4 Carer's leave may be taken for part of a day.
- 8.5.5 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 clause 8.5.
- 8.5.6 Subject to clause 8.5.5, the rights of an employer not to re-engage a long-term casual employee are not otherwise affected.

8.6 Carer's leave entitlement - short-term casual employees

- 8.6.1 A short-term casual employee is entitled to leave work or to be unavailable to attend work for up to two (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.
- 8.6.2 A short-term casual employee may leave work or be unavailable to attend work for reasons mentioned in clause 8.6.1 for additional periods if the employer agrees.
- 8.6.3 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 one (1) person to care for the person.
- 8.6.4 Carer's leave may be taken for part of a day.
- 8.6.5 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 section.
- 8.6.6 Subject to clause 8.6.5, the rights of an employer not to re-engage a short-term casual employee are not otherwise affected.
- 8.6.7 Carer's leave taken under clause 8.6 is unpaid.

8.7 Employee's obligation to provide supporting information

- 8.7.1 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.
- 8.7.2 An employee must, if practicable, give the employer:
- (a) notice of the 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 the leave, and
- (a) the period that the employee estimates he or she will be absent, and
 - (b) if the reason for taking the leave is because an unexpected emergency has arisen, the nature of the emergency.
- 8.7.3 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.

PART 9 - BEREAVEMENT LEAVE

9.1 Bereavement leave entitlement

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

- (a) at least two (2) days bereavement leave on full pay on the death of a member of the person's immediate family or house hold; 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 travel.

9.1.2 A long-term casual employee is entitled to:

- (a) at least two (2) days unpaid bereavement leave on the death of a member of the person's immediate family or house hold; 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 travel.

9.1.3 A short-term casual employee is entitled to be unavailable to attend work:

- (a) for up to two (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 travel.

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

9.1.5 An employee may take additional leave as unpaid bereavement leave if the employer agrees.

9.1.6 The employer must not fail to re-engage a casual employee only because the casual employee has taken bereavement leave under clause 9.1.

9.1.7 Subject to clause 9.1.6, the rights of an employer not to re-engage a casual employee are not otherwise affected.

PART 10 - CULTURAL LEAVE

10.1 Cultural leave entitlement

10.1.1 An employee may take up to five (5) days unpaid cultural leave in each year, if the employer agrees.

10.1.2 The employer must not unreasonably refuse the leave.

10.1.3 In considering the employee's request for leave, the employer must consider at least 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 particular circumstances of the employee;
- (d) the impact of a refusal on the employee, including the employee's ability to balance his or her work and family responsibilities.

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

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

10.1.5 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 10.1.4 (b) and (c) at the first opportunity.

10.1.6 For the purpose of this clause a reference to "employee" means an employee who is required by Aboriginal tradition or Island custom to attend an Aboriginal or Torres Strait Islander ceremony.

Dated 21 June 2012.

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

Operative Date: 21 June 2012