

# PARENTAL LEAVE

## Contents

Authority and Application .....	2
Overview .....	2
Relevant provisions of the VPS Agreement.....	2
Supplementary Guidance Information .....	3
1. Definitions.....	3
2. Other sources of entitlements to Parental Leave – Interaction with the National Employment Standards .....	3
3. Interaction with the <i>Paid Parental Leave Act 2010 (Cth)</i> .....	3
4. Qualifying period for Employees accessing paid parental leave .....	3
5. Eligibility to access parental leave for employees on secondment outside the VPS or detached 3	
6. Interaction between parental leave and probation .....	4
7. Eligibility for Primary Caregiver Parental Leave.....	4
8. Eligibility for Secondary Caregiver parental leave .....	5
9. Additional paid leave for Secondary Caregiver.....	5
10. Entitlements for Long Term Casuals.....	6
11. Entitlements for employee’s whose child is born by surrogate .....	7
12. Entitlements where a permanent care order is granted .....	7
13. Entitlements for employees whose Child is adopted .....	8
14. Total duration of absence on parental leave.....	8
15. Requests for extension of unpaid parental leave.....	8
16. Public Holidays which fall during periods of paid parental leave .....	9
17. Rules for taking parental leave entitlements.....	9
18. Using other accrued leave in conjunction with Parental Leave .....	10
19. Using parental leave in multiple blocks.....	10
20. Notice and evidence requirements for Primary Caregiver parental leave .....	11
21. Calculating rate of pay for paid parental leave.....	12
25. Returning from a period of parental leave.....	13
26. Keeping in touch days .....	13
27. Effect of Parental Leave on Long Service Leave Accruals.....	13
28. Extended Family Leave.....	14
Making decisions under this policy.....	14
Dispute resolution .....	14
Further Information.....	15

## Authority and Application

Clause 55 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement) applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 55 of the Agreement, together with the National Employment Standards (NES) contained in Part 2-2 of Chapter 2 of the *Fair Work Act 2009 (Cth)*, (FW Act), sets out an Employee's entitlement with respect to parental leave.

Full-time, part-time and Long-Term Casual Employees are entitled to parental leave under clause 55 of the Agreement if the leave is associated with the birth of a Child of the Employee or their spouse, or their legal surrogate, or the placement of a Child with the Employee for adoption, and the Employee has or will have responsibility for the care of the Child. Clause 55 also provides for parental leave for an Employee in respect of the birth or adoption of the grandchild who is a grandparent of a Child and if they are or will be the Primary Caregiver.

Where clause 55 of the agreement refers to the 'birth of a Child' this is inclusive of those employees who will become primary or secondary caregivers via a surrogacy arrangement as defined in clause 56 of the Agreement.

Paid parental leave is only available to ongoing and fixed term employees who have more than three months Continuous Service as defined in clause 55.2(b) of the Agreement. Ongoing or fixed term employees with less than three months Continuous Service, Long Term Casual Employees (as defined in clause 2 of the Agreement) or an Employee, who is or will be the Primary Caregiver of a grandchild, are entitled to unpaid leave.

The amount of paid and unpaid parental leave for employees is described in Table 21 of the Agreement. Whilst the amount of paid parental leave differs, all Employees who are eligible for parental leave will be entitled to at least 52 weeks of parental leave (including any paid leave). In the case of a couple, the total period of parental leave for both parents combined, with any extensions, must not exceed 24-months (104 weeks). An Employee's entitlement to primary caregiver and secondary caregiver parental leave, will be reduced by the period of any extension of parental leave taken by a member of the couple beyond 52 weeks.

Parental leave is available to only one parent at a time, except where parents may take up to eight weeks leave concurrently in connection with the birth or adoption of their Child.

Related Leave Entitlements for Employees in the Agreement also include:

- Acting as a surrogate for another person is described in Clause 56 of the Agreement, and
- providing foster or kinship care is described in clause 57 of the Agreement

In both cases separate underpinning policies also apply.

## Relevant provisions of the VPS Agreement

### Clause 55 – Parental Leave

## Supplementary Guidance Information

### 1. Definitions

- 1.1. Defined terms in this policy have the same meaning as their equivalent term in clause 55.2 of the Agreement.

### 2. Other sources of entitlements to Parental Leave – Interaction with the National Employment Standards

- 2.1. The FW Act prescribes minimum parental leave entitlements for eligible Employees in the NES. An enterprise agreement may include terms that are ancillary or incidental to the operation of an entitlement of an Employee under the NES and terms that supplement the NES only to the extent that the effect of those terms is not detrimental to an Employee in any respect, when compared to the NES (s.55(3), FW Act).
- 2.2. Clause 55 of the Agreement comprehensively covers the minimum parental leave entitlements prescribed by the NES.

### 3. Interaction with the *Paid Parental Leave Act 2010 (Cth)*

- 3.1. Clause 55.29 of the Agreement prescribes that the Commonwealth Paid Parental Leave Scheme (PPL) is in addition to any payments which may be available under clause 55 of the Agreement. The PPL Scheme derives from the *Paid Parental Leave Act 2010 (Cth)* (PPL Act).
- 3.2. The PPL Scheme is a Commonwealth Government program that is not administered by the Employer. For information around eligibility or queries in relation to the PPL Scheme please refer Services Australia - Family website at [www.familyassist.gov.au](http://www.familyassist.gov.au) or call Centrelink Families Line on 136 150.
- 3.3. Under the PPL Scheme, an eligible employee may elect to take up to 30 days of flexible PPL, which can also be accessed when the employee has returned to work. Employees accessing the 'flexible days' after they have returned to the workplace must not work on those days and must be the primary carer of the Child on those days. With agreement with the employer, the employee may access individual days or blocks of flexible days that suit their needs and circumstances.

### 4. Qualifying period for Employees accessing paid parental leave

- 4.1. For periods of parental leave commencing on or after 1 July 2020, to be eligible for paid primary or Secondary Caregiver parental leave under the Agreement, an Employee must have been employed within the VPS for 3 or more continuous months at the time of the birth or adoption of the Child.
- 4.2. For periods of parental leave commencing on or before 30 June 2020, Employers agreed, to waive the 12-month paid continuous service qualifying period before an Employee can access paid primary and Secondary Caregiver leave which applied under the 2016 Agreement, for Employees not subject to probation at the time the parental leave commences. This waiver took effect for periods of parental leave which commenced on or after 1 January 2019.
- 4.3. Employees who commenced parental leave prior to 1 January 2019 were paid entitlements in accordance with existing arrangements outlined in clause 51 of the 2016 Agreement, even if the period of parental leave continued beyond 1 January 2019.
- 4.4. A period of authorised leave (including authorised leave without pay) does not break the period of Continuous Service, unless expressly provided for in the Agreement.

### 5. Eligibility to access parental leave for employees on secondment outside the VPS or detached

- 5.1. Where an Employee is:

- 5.1.1. on authorised leave without pay, but is on secondment to another agency, or
- 5.1.2. has detached from their role, or
- 5.1.3. is working in an alternative role outside government

the host agency or employer will meet the parental leave obligations as set out in this clause or applicable industrial instrument.

- 5.2. Where the secondment or alternative role ceases during the parental leave period, the home agency will pay for any remaining parental leave entitlements and honour any outstanding period of unpaid leave.

## **6. Interaction between parental leave and probation**

- 6.1. Where an Employee who is eligible for parental leave after having served three months of Continuous Service commences their parental leave prior to completing the probationary period (six months) as per clause 18.3, the Employer will regard the probationary period as completed and the employee will receive confirmation of employment at the conclusion of the probationary period.
- 6.2. Any performance issues that arise during the probationary period (provided that concerns relate solely to unsatisfactory performance) that were unable to be finalised before the Employee commences parental leave, will be addressed in accordance with clause 18.3 regardless of an employee's intention to proceed on parental leave.

## **7. Eligibility for Primary Caregiver Parental Leave**

- 7.1. Primary Caregiver parental leave is associated with either the birth or adoption of a Child for whom the Employee will be the Primary Caregiver. For Employee's whose Child will be born by surrogate, the 'Surrogacy Parent' who will take on the primary caregiver responsibility via a surrogacy arrangement may also access primary caregiver parental leave under this clause.
- 7.2. The Primary Caregiver is the person who takes primary responsibility for the care of a newborn or newly adopted Child. The Primary Caregiver is the person who will meet the Child's physical needs more than anyone else.
- 7.3. Only one person can be the Child's Primary Caregiver on any particular day. Therefore, because eligibility for Primary Caregiver parental leave will be dependent on an Employee's caregiver status at the time the Child is born or placed with the Employee for adoption, an Employee will not be eligible for Primary Caregiver parental leave if another person is the Primary Caregiver at the date of the birth or placement of the Child.
- 7.4. Given the above, in a scenario where the Employee's spouse does not work or isn't entitled to paid parental leave from their Employer, the mere fact that an Employee's spouse will not be taking parental leave does not mean that the Employee is the Child's Primary Caregiver. The Employee's spouse, or another person, may be the person who will meet the Child's physical needs more than anyone else at the time Child is born or placed with the Employee for adoption.
- 7.5. An Employee cannot receive Primary Caregiver parental leave entitlements if their spouse has or will receive any paid primary caregiver/maternity parental leave entitlements from their employer.
- 7.6. An Employee who will be the Primary Caregiver, with more than three months continuous service in the VPS as at the date of birth or adoption, and whose period of parental leave commences on or after 1 July 2020, is entitled under clause 55.4(a) of the Agreement to up to 52 weeks parental leave, comprising:
  - 7.6.1. 16 weeks paid parental leave; and
  - 7.6.2. up to 36 weeks unpaid parental leave.
- 7.7. Parental leave may also be taken flexibly in blocks including periods less than a week, such as specific days of the week (see section 18 below for further information).

- 7.8. Employees who commence Primary Caregiver parental leave on or after 1 July 2020 and have not completed at least three months paid continuous service in the VPS at the time of the birth or adoption of their Child or are a Long-Term Casual Employee, under clause 55.4 (b) of the Agreement are entitled to up to 52 weeks unpaid parental leave.
- 7.9. Employees whose period of Primary Caregiver parental leave commences on or before 30 June 2020, will have their parental leave entitlements determined by clause 51 of the 2016 Agreement.

## **8. Eligibility for Secondary Caregiver parental leave**

- 8.1. To better assist new parents to share the caring responsibilities for their newborn Child, an Employee who has completed at least three months Continuous Service and who will be the Secondary Caregiver at the time of birth or adoption of their Child is entitled to 52 weeks of parental leave under clause 55.5 (a) of the Agreement, comprising of:
  - 8.1.1. 4 weeks paid parental leave; and
  - 8.1.2. 12 weeks Additional paid Secondary Caregiver parental leave, subject to the conditions in clause 55.6 of the Agreement, andunpaid parental leave to bring the total available paid and unpaid leave to 52 weeks.
- 8.2. For Employees whose Child will be born by surrogate, the 'Surrogacy Parent' who will not be the primary caregiver of the Child may be able to access secondary caregiver parental leave under this clause.
- 8.3. To be entitled to the leave provisions outlined by paragraph 8.1 above, the period of parental leave must have commenced on or after 1 July 2020. Employees whose parental leave commenced on or before 30 June 2020 were entitled to the leave entitlements outlined in the 2016 VPS Agreement.
- 8.4. An ongoing or fixed term Employee who will be the Secondary Caregiver, and has not completed at least three months paid Continuous Service at the time of the birth or adoption of their Child, or is a Long Term Casual Employee, and commences Secondary Caregiver parental leave from 1 July 2020 is entitled to up to 52 weeks unpaid parental leave, under clause 55.5(b) of the Agreement.
- 8.5. The Employer may ask a Secondary Caregiver to provide evidence which would satisfy a reasonable person of their eligibility to take Secondary Caregiver parental leave, including the Additional 12-week leave component.

## **9. Additional paid leave for Secondary Caregiver**

### *Eligibility*

- 9.1. An Employee who is or was a Secondary Caregiver may be eligible to access 12 weeks of Additional paid Secondary Caregiver leave if the Employee meets the requirements as set out in clause 55.6 of the Agreement. Clause 55.6(a)(i) of the Agreement makes it clear that to be eligible for the Additional paid Secondary Caregiver parental leave the Employee must assume primary responsibility for the care of the Child by meeting the Child's physical needs more than anyone else.
- 9.2. Additional paid Secondary Caregivers leave is not to be taken concurrently with the Employee's partner and as a minimum it would be expected that to assume primary responsibility for the Child, the Employee's partner must have returned to work or study (or similar) which may be on either a full-time or part- time basis.
- 9.3. Consistent with 55.6(a) of the Agreement, the 12 weeks Additional paid Secondary Caregiver leave must have been commenced and be completed within the first 78 weeks of the date of birth or adoption of the Child.

- 9.4.** To access the Additional paid Secondary Caregiver leave, the employee must have been eligible for paid Secondary Caregiver leave at the time of the birth or adoption of their Child, irrespective of when the Employee elects to take the leave. If the birth or adoption of the Child occurred prior to 1 July 2020, an employee must have completed their probationary period of three months to be eligible.
- 9.5.** A Secondary Caregiver whose Child was born or adopted on or before 30 June 2020 and who was entitled to paid Secondary Caregiver parental leave at the time of birth or adoption of their Child, may access the 12 weeks Additional paid Secondary Caregiver parental leave provided they meet the requirements of clause 55.6 of the Agreement and their absence on the additional 12 weeks Secondary Caregiver leave commences on or after 1 July 2020 and the leave is taken within the first 78 weeks after the birth or adoption of their Child.

*Using Additional paid Secondary Caregiver leave in a flexible manner*

- 9.6.** Where an Employee and Employer agree to allow an Employee to use their entitlement to Additional paid Secondary Caregiver parental leave flexibly in accordance with clause 55.18(c) of the Agreement, for example, two days per week where they assume the primary caring responsibilities and the remaining three days per week at work, the 12 weeks is to equate to 60 days of leave, which can be used within the first 78 weeks of the date of birth or adoption of the Child.
- 9.7.** Employees cannot access leave in an ad-hoc manner or use it as a pool of leave from which to draw from at their discretion. Any arrangement to access parental leave entitlements must still meet the notice requirements as set out in clause 55.16 of the Agreement. This means any agreement about how the Employee intends to take the leave, including proposed dates, must be agreed in advance.

*Notice and evidence requirements*

- 9.8.** To be eligible for Additional paid Secondary Caregiver leave the employee must meet the requirements of clause 55.6(a) of the Agreement. The Employer may ask for evidence to the support that the employee is in fact entitled to leave under this provision. This may involve the Employee being required to provide a statutory declaration in accordance with clause 55.16 of the Agreement, attesting amongst other things to their eligibility for Secondary Caregiver leave and any particulars of the leave being taken by the Employee's spouse.
- 9.9.** Where the Employer subsequently becomes aware that the Employee is no longer meeting the Child's physical needs more than anyone else then the Employer may ask for further evidence to substantiate the continued entitlement to the leave. If the employee is no longer eligible to take Additional paid Secondary Caregiver leave, the employer and employee may agree to change the absence to another type of paid or unpaid leave (including unpaid Secondary Caregiver Leave) or alter their arrangements to suit the day(s) they remain eligible for leave under this provision.
- 9.10.** Secondary Caregivers should provide at least ten weeks written notice of their intention to take Secondary Caregiver Parental Leave in accordance with clause 55.16 of the Agreement. Where a Secondary Caregiver then intends to take Additional Secondary Caregiver Parental Leave under clause 55.6 of the Agreement, they should provide a further ten weeks written notice in advance of the intended start date for their Additional Secondary Caregiver at that time.

**10. Entitlements for Long Term Casuals**

- 10.1.** The Agreement makes provision for Long Term Casual Employee to be entitled to unpaid parental leave. A casual employee is a long-term casual employee where the employee:
- 10.1.1.** has been employed on a regular and systematic basis by their employer for a sequence of periods of employment during a period of at least 12 months; and
  - 10.1.2.** has, but for accessing parental leave under clause 55, a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.



- 10.2. Long Term Casual Employees may access up to 52 weeks of unpaid parental leave. Long-term casuals employees may also request an extension to their period of unpaid parental under clause 55.23(b) of the Agreement.
- 10.3. A Casual Employee does not have an entitlement to paid Pre-Natal Leave under clause 55.7 of the Agreement, however they may access other leave (unpaid) with approval from the Employer. Each absence on Pre-Natal Leave must be covered by a medical certificate.
- 10.4. The Employer must not fail to re-engage a casual employee because the employee has accessed parental leave in accordance with this clause.

#### **11. Entitlements for employee's whose child is born by surrogate**

- 11.1. An Employee who enters into a surrogacy arrangement may be either the Surrogate (a person who carries the Child through pregnancy with the intention that the Child born as a result of the formal surrogacy arrangement will be the Child of another person) or Surrogacy Parent (a person or persons who have entered into a formal surrogacy arrangement and who will be the recognised parent(s) who will take responsibility of the Child after the Child is born).
- 11.2. Clause 55 of the Agreement outlines the provisions for an eligible Employee, who is a Surrogacy Parent. Note Clause 55.11 of the Agreement mistakenly refers to clause 56 of the Agreement when referring to entitlements in this situation – for a Surrogacy Parent the correct reference is clause 55 of the Agreement.
- 11.3. Clause 56 of the Agreement specifically outlines the provisions for an eligible Employee, who is the Surrogate. Please refer to the Surrogacy Leave Policy for guidance on the surrogacy leave entitlements for an eligible Employee who will be the Surrogate.
- 11.4. A Surrogacy Parent who will be the Primary Caregiver of the Child and a Surrogate are both entitled to up to 38 hours pre-natal leave in accordance with the conditions in clause 55.7 of the Agreement. Their spouses are entitled to up to 7.6 hours pre-natal leave in accordance with the conditions in clause 55.7 of the Agreement.
- 11.5. To be eligible for leave under clauses 55 or 56 of the Agreement, the arrangement must be recognised as a formal surrogacy arrangement which complies with Part 4 of the *Assisted Reproductive Treatment Act 2008 (Vic)* and be entered into on or after 1 July 2020.

#### **12. Entitlements where a permanent care order is granted**

- 12.1. Eligible employees who are granted a permanent care order pursuant to the *Children, Youth and Families Act 2005 (Vic)* or a permanent parenting order by the Family Court of Australia will have access to parental leave in accordance with clause 55 on or after the date the permanent care order is granted.
- 12.2. To be eligible for parental leave, the Employee must in addition to being granted a permanent care order, meet the requirements to access Primary or Secondary Caregiver parental leave as outlined in clause 55 of the Agreement.
- 12.3. Consistent with other parental leave entitlements, ongoing or fixed term Employees with less than 3 months paid Continuous Service or Long-Term Casual Employees who are granted a permanent care order will have access up to 52 weeks of unpaid parental leave.
- 12.4. Employees who are granted a permanent care order may take the leave at a time agreed with their Employer within 52 weeks of the date of the order, unless an extension is sought under 55.23(b) of the Agreement. Leave cannot be taken retrospectively to the receipt of the order, even when the Child may have been placed in the Employee's care prior to the date the order is granted.
- 12.5. Consistent with other forms of parental leave the leave may be taken flexibly, for example, in blocks of leave, with the agreement of their Employer in accordance with clause 55.18 of the Agreement.

### **13. Entitlements for employees whose Child is adopted**

- 13.1.** An Eligible Employee who will have completed at least three months paid Continuous Service and who will be the primary caregiver at the time of the adoption of their Child is entitled to up to 52 weeks parental leave comprising of 16 weeks paid parental leave and up to 36 weeks unpaid leave.
- 13.2.** In relation to adoption related leave, in accordance with clause 55.2(c)(ii) of the Agreement, an Employee will only be eligible to the paid parental leave if the Child is or will be under 16 years of age at the date of the placement; will not have lived with the Employee continuously for a period of 6 months prior to the placement (if the Child has only lived intermittently with the Employee the Employee is still eligible), and is not (otherwise than because of adoption) a Child of the Employee or the Employee's Spouse.

### **14. Total duration of absence on parental leave**

- 14.1.** Unless an extension is approved, the total duration of an Employee's absence on parental leave under the Agreement, including paid and unpaid leave cannot exceed 52 weeks.
- 14.2.** Extensions to the duration of absence on parental leave may be applied for and considered under clause 55.23 of the Agreement. Where an extension is granted, the total duration of the absence must be no longer than 24 months (or for an Employee Couple, a combined period of 24 months). Consistent with clause 55.23(b)(iv) of the Agreement request for an extension to parental leave may only be refused on reasonable business grounds (see section 15 for further information).
- 14.3.** The Agreement also allows an Employee who is a Primary Caregiver and has exhausted all parental leave entitlements to apply for Extended Family Leave on an annual basis for up to a total of seven years, including any period of Parental Leave (see paragraph 27 below).

### **15. Requests for extension of unpaid parental leave**

- 15.1.** Under clause 55.23 of the Agreement, an Employee on parental leave may request an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the current parental leave period.
- 15.2.** Employers must discuss any request for extension of unpaid parental leave with Employees and genuinely try to reach an agreement with the Employee about an extension of unpaid parental leave.
- 15.3.** The Employer must respond to the Employee's request in writing within 21 days. The response must state whether the request is granted, refused, or, if following discussions between the parties the Employer and Employee agree to an extension of time that differs from the period requested, the response must set out the agreed extended period.
- 15.4.** The Employer may refuse the request only if:
  - 15.4.1.** the Employer has discussed the request with the Employee, and,
  - 15.4.2.** the Employer has genuinely tried to reach agreement with the Employee, and the parties have not reached an agreement, and
  - 15.4.3.** the Employer has had regard to the consequences of the refusal for the Employee, and
  - 15.4.4.** the refusal is on reasonable business grounds.
- 15.5.** Consistent with clause 55.23(b)(iv) of the Agreement, requests for an extension to parental leave may only be refused on reasonable business grounds. If a request for extension of parental leave is refused, the Employer's written response must set out the particular business grounds for refusing the request and explain how those grounds apply to the Employee's request. The response must also either set out the extension of the period of parental leave for the Employee (other than the period requested by the Employee) that the Employer would be willing to agree to, or state that there is no extension of the period that the Employer would be



willing to agree to, and that they may seek to resolve any dispute arising under this policy in accordance with clause 13 of the Agreement.

- 15.6.** From 6 June 2023, the FW Act provides further guidance on what constitutes reasonable business grounds for refusing a request for extension of parental leave to include, but are not limited to:
- 15.6.1.** that the extension of the period of unpaid parental leave requested by the Employee would be too costly for the Employer;
  - 15.6.2.** that there is no capacity to change the working arrangements of other Employees to accommodate the extension of unpaid parental leave requested by the Employee.
  - 15.6.3.** that it would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the extension of unpaid parental leave requested; or,
  - 15.6.4.** that the extension of the period of unpaid parental leave requested would be likely to result in a significant loss of efficiency or productivity or have a significant negative impact on customer service.
- 15.7.** In assessing whether there are reasonable business grounds for refusing the extension of unpaid parental leave requested by the Employee, the Employer should consider its specific circumstances, including the nature and size of the Employer's enterprise.

#### **16. Public Holidays which fall during periods of paid parental leave**

- 16.1.** Consistent with clause 55.20 of the Agreement, where a public holiday falls on day the Employee is on paid parental leave, the Employee will be granted a day off in lieu, to be taken by the Employee immediately following the period of paid parental leave.
- 16.2.** For example, if an employee is rostered Monday to Thursday and takes their paid parental leave flexible from Monday to Wednesday and a public holiday fell on the Monday, the day in lieu is Thursday. Employees must access that leave in lieu day on that Thursday to avoid employees banking leave in lieu days to be taken at a later date.

#### **17. Rules for taking parental leave entitlements**

- 17.1.** An Employee who is pregnant may commence parental leave up to 16 weeks prior to the expected date of the birth of the Child and must commence no later than that date. In all other cases, Primary Caregiver parental leave commences no later than the expected date of birth or the placement of the Child. Secondary Caregiver parental leave may commence one week prior to the expected date of birth or adoption of the Child, unless otherwise agreed by the Employee and Employer
- 17.2.** Parental leave is to be available to only one parent at a time, except parents may take up to eight weeks leave concurrently with each other. Concurrent leave may commence one week prior to the expected date of the birth of the Child or placement in the case of adoption. Employees who are granted a permanent care order may access concurrent leave from the date the care order is granted. Concurrent leave does not need to be taken as a continuous 8 week period. Unless the Employer agrees each block of leave must be for at least two weeks.
- 17.3.** An Employee's eligibility for parental leave under this clause is determined at the time of adoption of the Child, or the date a permanent care order is granted. Nevertheless, the Employer and Employee may agree for the employee to use any paid component at any time within the first 52 weeks of parental leave or, if parental leave is extended, within the first 104 weeks of parental leave if they are taking paid Primary Caregiver leave or within the first 78 weeks of parental leave if they are taking Additional paid Secondary Caregiver leave.
- 17.4.** Parental leave does not need to be taken in a single continuous period (except for Grandparent leave). The Employer will take into account operational requirements and the Employee's

personal and family circumstances in considering requests for parental leave in more than one continuous period. Approval of such requests will not be unreasonably withheld.

- 17.5. For example, an Employee may take nine months Primary Caregiver parental leave. At the conclusion of nine months, the Employee returns to work for three months while the Employee's partner accesses their entitlement to Additional paid Secondary Caregiver parental leave under clause 55.6 of the Agreement. At the conclusion of the Employee's partner's Additional paid Secondary Caregiver leave, the partner returns to work and the Employee resumes unpaid parental leave for a further 12 months.
- 17.6. Employees wishing to utilise their parental leave in a flexible manner similar to the above example, should discuss their proposed arrangements with their Employer as soon as practicable. Should the Employee utilise their parental leave in a flexible manner, the Employee will provide as much notice as possible to allow the Employer sufficient time to consider their request and put in place appropriate operational arrangements, including backfill arrangements, which may facilitate the flexibility sought by the Employee.
- 17.7. Employees who wish to take their parental leave in more than a single continuous period should ensure they understand the impacts (if any) of doing so on other payments, for example, the Commonwealth Government's Paid Parental Leave, they may be entitled to prior to finalising these arrangements with the Employer.
- 17.8. Employees cannot access parental leave in an ad-hoc manner or use it as a pool of leave to utilise at their discretion. Any arrangement to access parental leave entitlements must still meet the notice requirements as set out in clause 55.16 of the Agreement. This means any agreement about how the Employee intends to take the leave, including proposed dates, must be agreed in advance.

## **18. Using other accrued leave in conjunction with Parental Leave**

- 18.1. Employees may seek to access accrued annual or long service leave entitlements in conjunction with Parental Leave, subject to the requirements of clause 55.19 of the Agreement.
- 18.2. Employees who use annual and long service leave in conjunction with their parental leave are not entitled to access personal leave in lieu of parental leave if they or a member of their immediate family or household become ill or injured. This is because the employee is on parental leave, notwithstanding the agreement of the employer to allow the employee to use other accrued entitlements to extend the paid component of the absence during the period of absence from work.

## **19. Using parental leave in multiple blocks**

- 19.1. Clause 55.18(c) of the Agreement makes it clear that while parental leave does not need to be taken as a single continuous period it does require that each block be agreed between the Employer and Employee considering the Employer's operational requirements and the Employee's personal and family circumstances. In some cases, Employers may not be able to agree to blocks of parental leave which are operationally difficult (i.e. half day periods of parental leave).

### **Using parental leave in multiple blocks - Examples**

Examples of how Employee's may wish to consider using such arrangements include:

- A Primary Caregiver takes 8 weeks of paid parental leave, returns to work for 12 weeks, and then takes another 8 weeks of paid parental leave before taking the remaining 36 weeks of unpaid parental leave to bring the total period of parental leave to 52 weeks; or
- A Primary Caregiver or Secondary Caregiver may use their paid parental leave to supplement a part-time arrangement without changing their employment status, by substituting their work days with parental leave e.g. work at 0.6 FTE for part of the

week and take leave for the remaining 0.4 FTE hours to total their 1.0 FTE substantive time fraction.

- 19.2. Where an Employer and Employee agree to the use of paid parental leave in multiple blocks, the averaging calculations for the purposes of establishing the rate of pay during each block should be made at the commencement of parental leave.
- 19.3. Where it is agreed that an Employee will take their parental leave in multiple non-continuous blocks, the averaging calculation made at the commencement of the parental leave under clause 55.25 of the Agreement, will apply to all the blocks of leave taken.
- 19.4. This approach is to be consistent with the general principle throughout the clause that parental leave commences at the time of birth or adoption of the Child. Other arrangements of parental leave described as alternative arrangements or multiple blocks are considered models of accessing parental leave, and these are not characterised as the commencing and recommencing parental leave.

## **20. Notice and evidence requirements for Primary Caregiver parental leave**

- 20.1. Under clause 55.16(a) of the Agreement, an Employee requesting parental leave must give 10 weeks' written notice of their intention to take parental leave, including the proposed start and end dates. The Employee must confirm these details including the intended start and end dates or advise of any changes to the proposed arrangements no later than four weeks before the intended commencement of parental leave in accordance with clause 55.16(b) of the Agreement.
- 20.2. The Employee must also provide a statutory declaration containing the details specified in clause 55.16(a) and may also be required to provide the evidence outlined in clause 55.16(c) of the Agreement, to confirm the birth or adoption of the Child.
- 20.3. The statutory declaration required under clause 55.16(a), must state that the Employee will become either the Primary Caregiver or Secondary Caregiver, as appropriate, the particulars of any parental leave to be taken by the Employee's spouse and that for the period of the parental leave the Employee will not engage in any conduct inconsistent with their contract of employment.
- 20.4. Where an Employee will be taking Additional paid Secondary Caregiver leave, the Employer can request that the Employee confirms in their statutory declaration that they meet the eligibility requirements of the leave as per clause 55.6 of the Agreement.
- 20.5. If the Employee is requesting Primary Caregiver parental leave or Additional paid Secondary Caregiver leave, the statutory declaration must satisfy a reasonable person that the Employee will meet the Child's physical needs more than anyone else from the time of the birth or placement of the Child or from the proposed commencement date of the Additional paid Secondary Caregiver leave under clause 55.6 of the Agreement.
- 20.6. A statutory declaration in the terms described in clause 55.16 should in most cases be sufficient to satisfy the eligibility requirement. However, the evidence required to satisfy the Employer that the Employee will be the Primary Caregiver of the Child will vary depending on the circumstances of each individual case.
- 20.7. The Employer may require an Employee applying for Primary Caregiver parental leave or Additional paid Secondary Caregiver leave to provide a further statutory declaration or other appropriate evidence to the satisfaction of the Employer to substantiate their entitlement to Primary Caregiver parental leave if the statutory declaration provided under clause 55.16(a) of the Agreement provides insufficient evidence to substantiate that the Employee will be or will become the Primary Caregiver of the Child. The Employer may also seek evidence of the particulars of any parental leave taken or proposed to be taken by their spouse.

## **21. Calculating rate of pay for paid parental leave**

- 21.1.** Under clause 55.25(a) of the Agreement, the calculation of weekly pay to be paid to an Employee during paid parental leave is based on the average number of ordinary hours worked by the Employee over the preceding three years from the proposed commencement date of parental leave ('Averaging Period').
- 21.2.** Where an Employer and Employee agree to allow an Employee to use their parental leave flexibly in more than one block the averaging calculation is done at the commencement of the parental leave and the same calculation will be applied to all blocks of leave with respect to parental leave for that birth or adoption.
- 21.3.** Under clause 55.25(b) of the Agreement, the Averaging Period for Employees who have less than three years of service is their total period of service in the VPS.
- 21.4.** Clause 55.25(c) of the Agreement stipulates periods of service which fall within the averaging period which are excluded from the calculation. In applying 55.25(c)(iii) of the Agreement, an 'unforeseen reason beyond the Employee's control' may include, for example, a personal illness or injury suffered by the Employee, or the care or support of an ill or injured immediate family or household member by the Employee.
- 21.5.** This can be contrasted with scenarios where an Employee has taken unpaid leave for a reason that is not unforeseen, for example, for a lifestyle or personal reason, such as extended leave for recreational purposes, leave for a career break, or leave to undertake another form of employment. In these cases, the Employer will include these periods of service in the averaging period for the purposes of determining the rate of pay for paid parental leave purposes.

## **22. Superannuation contributions in respect of Primary Caregiver parental leave**

- 22.1.** An Employee who returns to work at the conclusion of a period of Primary Caregiver parental leave is entitled to have superannuation contributions made in respect of the period of the Employee's Primary Caregiver paid and unpaid parental leave, subject to requirements in clause 37.5 (Superannuation) of the Agreement.
- 22.2.** Superannuation contributions will only be made with respect to the number of weeks of Primary Caregiver paid and unpaid parental leave taken by the Employee, capped at a total of 52 weeks.
- 22.3.** Superannuation contributions will be made as a lump sum contribution on or before the first superannuation guarantee quarterly payment due date after the Employee has returned to work at the conclusion of their Primary Caregiver parental leave.
- 22.4.** If the Employee extends their parental leave under clause 55.23, superannuation contributions will only be paid with respect to the first 52 weeks of the Employee's parental leave and the lump sum contribution will not be made until the Employee returns to work at the completion of their parental leave.
- 22.5.** The quantum of the superannuation contribution will be calculated in accordance with clause 37.5(d) of the Agreement.
- 22.6.** Superannuation contribution under clause 37.5 of the Agreement are payable on both paid and unpaid periods of Primary caregiver parental leave, including where an Employee can only access unpaid parental leave.
- 22.7.** Superannuation contributions under this provision will only be made with respect to the period of Primary Caregiver parental leave which falls on or after 1 July 2020. Where an Employee's Primary Caregiver parental leave commenced before this date but continues after 1 July 2020, the lump sum contribution will be based on the portion of the first 52 weeks which falls on or after 1 July 2020.

## **23. Progression for Primary Caregivers**

- 23.1.** An Employee who returns to work at the conclusion of a period of Primary Caregiver parental leave may be entitled to progression steps or amounts forgone as a result of being on parental leave in accordance with clause 29 (Performance Development Progression) in the Agreement. For further information please consult clause 29.7 of the Agreement and the Performance Development and Progression common policy.

#### **24. Interaction between parental leave and redeployment**

- 24.1.** An employee who is declared surplus while on parental leave, will continue to receive their paid parental leave entitlements. For an employee within the first 52 weeks of parental leave, the commencement of the 3-month redeployment period is deferred until they return to work. This is to ensure the employee can actively participate in redeployment process (consistent with principle 10 in Schedule A of the Agreement).
- 24.2.** Employers must ensure that employees on parental leave are not declared surplus as a result of taking parental leave.

#### **25. Returning from a period of parental leave**

- 25.1.** The Employer can only refuse a request to return to work at a reduced time fraction for the purpose of reconciling work and parental responsibilities under clause 55.30(c)(i) of the Agreement on reasonable business grounds.

#### **26. Keeping in touch days**

- 26.1.** Prior to commencing parental leave, the Employee and their Employer should discuss appropriate arrangements for keeping in touch, including the use of keeping in touch days to assist with achieving any training identified in the Employee's Performance Development Plan or training to assist with new approaches or processes that may have been introduced since their absence.
- 26.2.** During a period of unpaid parental leave an Employee and their Employer may agree to perform work for the purpose of keeping in touch in order to facilitate a return to employment at the end of the period of leave.
- 26.3.** Employees can work up to 10 keeping in touch days during a 12-month parental leave period. Keeping in touch days are a separate entitlement arising under the National Employment Standards and are distinct from the other entitlements and flexibilities available to Employees under the Agreement.
- 26.4.** An employee will be paid their normal wage and accumulate leave entitlements for each keeping in touch day or part day worked.
- 26.5.** Keeping in touch days may be used by the Employee, for example to:
- 26.5.1.** participate in work related training or team meetings,
  - 26.5.2.** support the employee's transition back into the workplace after a period of parental leave
  - 26.5.3.** allow an Employee, otherwise on parental leave, to become familiar with new or updated processes
  - 26.5.4.** take part in forward planning discussions or a meeting that may affect their role.

#### **27. Effect of Parental Leave on Long Service Leave Accruals**

- 27.1.** Consistent with clause 62.5(b) of the Agreement, from 1 January 2019, long service leave will continue to accrue for an absence after the birth or adoption of a Child (other than in the case

of a casual Employee) on unpaid parental leave which, in combination with any paid parental leave taken, totals 52 weeks or less.

## **28. Extended Family Leave**

- 28.1.** Where an Employee wishes to take extended family leave, the Employee will be required to acknowledge in writing that in accordance with clause 55.33(d) of the Agreement they may not be able to return to their substantive position on their return to the workplace at the conclusion of their period of extended family leave and may be reallocated other duties.
- 28.2.** Consistent with clause 55.33(b) of the Agreement, an Employee must make an application for Extended Family Leave each year they are seeking the leave.

## **29. Special parental leave**

- 29.1.** The National Employment Standards provide that where a pregnant Employee's pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living child and the child is not stillborn the Employee may access unpaid special maternity leave for the period they are unfit for work.
- 29.2.** Clause 55.15 currently only provides access to special parental leave where the pregnancy terminates after the completion of 20 weeks. To ensure clause 55.15 of the Agreement is compliant with this requirement the following entitlements will apply, in lieu of clause 55.15:
- 29.2.1.** Where the pregnancy of an Employee not then on parental leave terminates other than by the birth of a living Child, the Employee may take leave for such periods as a registered medical practitioner certifies as necessary, as follows:
- a)** where the pregnancy terminates during the first 11 weeks, during the certified period/s the Employee is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with clause 51 of the Agreement;
  - b)** where the pregnancy terminates after a gestation of at least 12 weeks but before the completion of 20 weeks, during the certified period/s the Employee is entitled to unpaid special maternity leave and/or to access any paid personal/carer's leave entitlements in accordance with clause 51 of the Agreement;
  - c)** where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the Employee is entitled to paid special maternity leave not exceeding the amount of paid parental leave available under clause 55.3 and thereafter, to unpaid special maternity leave.

## **Making decisions under this policy**

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

## **Dispute resolution**

An Employee who is directly affected by a decision made or action taken pursuant to clause 55 or under this policy may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.



## Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Other Leave
- Personal/Carers Leave
- Long Service Leave
- Performance Development and Progression
- Surrogacy Leave
- Foster and Kinship Care
- Review of Actions

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

Authorised by Industrial Relations Victoria:

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