

PARENTAL LEAVE

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Authority and Application

Clause 62 of the *Victorian Public Service Enterprise Agreement 2024* (the Agreement) applies to Victorian Public Service (VPS) Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 62 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 Employees' entitlement to parental leave.

Full-time, part-time and Regular Casual Employees are entitled to parental leave under clause 62 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 62 of the Agreement 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 62 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 63 of the Agreement.

Paid parental leave is only available to ongoing and fixed term Employees. Employees are not required to serve a minimum period of continuous service to be eligible to paid parental leave. Regular 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 25 of the Agreement. While 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 (which may include paid and unpaid leave). The total period of parental leave including any extensions, must not exceed 24-months (104 weeks).

Related Leave Entitlements for Employees in the Agreement also include:

- Acting as a surrogate for another person is described in clause 63 of the Agreement, and
- providing foster or kinship care is described in clause 64 of the Agreement.

In both cases separate underpinning policies also apply.

Relevant provisions of the Agreement

Clause 62 – Parental Leave

Supplementary Guidance Information

1. Definitions

- 1.1. Defined terms in this policy have the same meaning as their equivalent term in clause 62.2 of the Agreement.

2. 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 62 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 62.29 of the Agreement prescribes that the Commonwealth Paid Parental Leave Scheme (PPL) is in addition to any payments which may be available under clause 62 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 about the PPL Scheme, including eligibility, please refer to the Services Australia – Raising kids, website at servicesaustralia.gov.au/raising-kids or call Centrelink Families Line on 13 61 50.
- 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 the Employer’s agreement 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 the commencement of the Agreement on 19 August 2024, there is no minimum period of continuous service required to be eligible for paid Primary or Secondary Caregiver parental leave under the Agreement.
- 4.2. 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. is working in an alternative role outside government,the host Agency or Employer will meet the parental leave obligations as set out in clause 62 of the Agreement 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 commences their parental leave prior to completing the probationary period (six months) as per clause 20.3 of the Agreement, 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 20.3 of the Agreement 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 Employees 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 clause 62 of the Agreement.
- 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 the 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, whose period of parental leave commences on or after the commencement of the Agreement on 19 August 2024 is entitled under clause 62.4(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 of this policy for further information).
- 7.8. Regular Casual Employees are entitled to up to 52 weeks unpaid parental leave under clause 62.4(b) of the 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 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 62.5(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 62.6 of the Agreement, and
 - 8.1.3. unpaid 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 clause 62 of the Agreement.
 - 8.3. An Employee who will be the Secondary Caregiver, and is a Regular Casual Employee, is entitled to up to 52 weeks unpaid parental leave, under clause 62.5(b) of the Agreement.
 - 8.4. 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 62.6 of the Agreement. Clause 62.6(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 primary caregiver of the Child must have returned to work or study (or similar) which may be on either a full-time or part-time basis, or is no longer able to have primary responsibility for the Child on a full-time or part-time basis (for example, due to serious illness or injury).
- 9.3. Consistent with clause 62.6(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.

Using Additional Paid Secondary Caregiver leave in a flexible manner

- 9.5. 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 62.18(b) 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.
- 9.6. Further to section 9.5 of this policy, where the Additional Paid Secondary Caregiver does not work a standard roster pattern and/or wishes to use the entitlement flexibly, the quantum of 12 weeks' pay may be expressed as 456 hours for a full-time Employee or 480 hours for Custodial Officers in the Custodial Structure working an 80-hour fortnight. The paid leave is to be taken on the Employee's rostered days, in accordance with clause 62.6(b) of the

Agreement. Any arrangement to access parental leave entitlements must still meet the notice requirements as set out in clause 62.16 of the Agreement.

- 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 62.16 of the Agreement. This means any agreement about how the Employee intends to take the leave, including proposed dates and how they propose to arrange their parental leave, 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 62.6(a) of the Agreement. The Employer may ask for evidence supporting the Employee's entitlement to leave under this provision. This may involve the Employee providing a statutory declaration in accordance with clause 62.16 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 62.16 of the Agreement. Where a Secondary Caregiver then intends to take Additional Secondary Caregiver Parental Leave under clause 62.6 of the Agreement, they should provide a separate ten weeks' written notice in advance of the intended start date for their Additional Secondary Caregiver at that time.

10. Entitlements for Regular Casual Employees

- 10.1. The Agreement makes provision for Regular Casual Employees to take to unpaid parental leave. A casual Employee is a Regular Casual Employee where the Employee:
- 10.1.1. has been employed on a regular and systematic basis by their Employer; and
 - 10.1.2. has, but for accessing parental leave under clause 62 of the Agreement, a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.
- 10.2. Regular Casual Employees may access up to 52 weeks of unpaid parental leave. Regular Casual Employees may also request an extension to their period of unpaid parental under clause 62.23(b) of the Agreement.
- 10.3. A Casual Employee does not have an entitlement to paid Pre-Natal Leave under clause 62.7 of the Agreement, however they may access other unpaid leave 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 clause 62 of the Agreement.

11. Entitlements for an Employee 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 62.11 of the Agreement outlines the provisions for an eligible Employee who is a Surrogacy Parent.
- 11.3. Clause 63 of the Agreement 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 62.7 of the Agreement. Their spouses are entitled to up to 7.6 hours pre-natal leave in accordance with the conditions in clause 62.7 of the Agreement.
- 11.5. To be eligible for leave under clauses 62 or 63 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 62 of the Agreement 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 under clause 62.9 of the Agreement, meet the requirements to access Primary or Secondary Caregiver parental leave as outlined in clause 62 of the Agreement.
- 12.3. Consistent with other parental leave entitlements, Regular 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 clause 62.23(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 62.18 of the Agreement.

13. Entitlements for Employees whose Child is adopted

- 13.1. An eligible Employee who will be the primary or secondary caregiver at the time of the adoption of their Child is entitled parental leave subject to meeting the requirements outlined in clause 62 of the Agreement.
- 13.2. In relation to adoption related leave, in accordance with clause 62.2(b)(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 six 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.

13.3. Regular Casual Employees who adopt a child will have access to up to 52 weeks of unpaid parental leave.

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 62.23 of the Agreement. Where an extension is granted, the total duration of the absence must be no longer than 24 months. Consistent with clause 62.23(b)(iii) of the Agreement request for an extension to parental leave may only be refused on reasonable business grounds (see section 15 of this policy 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 section 29 of this policy).

15. Requests for extension of unpaid parental leave

15.1. Under clause 62.23(b) of the Agreement, an Employee on parental leave may request an extension of unpaid parental leave for a further period of up to 52 weeks immediately following the end of the current parental leave period.

15.2. Employers must consider the request having regard to clause 62.23(b)(iii) of the Agreement, 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 62.23(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 62.20 of the Agreement, where a public holiday falls on a 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 flexibly from Monday to Wednesday consistent with clause 62.18 of the Agreement 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 any time within 16 weeks prior to the expected date of the birth of the Child. 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. An Employee's eligibility for parental leave under clause 62 of the Agreement is determined at the time of the birth or 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.
- 17.3. 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.
- 17.4. For example, take two parents who are both employed in the VPS and have a child together. In this example, the Employees choose to arrange their leave flexibly, with one parent taking nine months of Primary Caregiver parental leave. At the conclusion of nine months, that Employee returns to work for three months while the Employee's partner accesses their entitlement to Additional Paid Secondary Caregiver parental leave under clause 62.6 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.

- 17.5. 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.
- 17.6. 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 they may be entitled to prior to finalising these arrangements with the Employer. An example is the Commonwealth Government's Paid Parental Leave, they may be entitled to prior to finalising these arrangements with the Employer.
- 17.7. 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 62.16 of the Agreement. This means any agreement about how the Employee intends to take the leave, including proposed dates and how they propose to arrange their parental leave, 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 or other accrued entitlements (except Personal / Carers Leave or Compassionate Leave) in lieu of Parental Leave, subject to the requirements of clause 62.19 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. Hospitalised children

- 19.1. Where an Employee would have taken parental leave but for the Employee's Child being required to remain in hospital after its birth or being hospitalised immediately after its birth, the Employer and Employee may agree that the Employee will not take parental leave while the Child remains in hospital.
- 19.2. In accordance with clause 62.17(c) of the Agreement, the Employee may elect to return to work for this period or may access other forms of paid or unpaid leave. If the Employee accesses other forms of leave or returns to work, the effect of this agreed period of leave or work is that it will extend the subsequent period of parental leave by an equal amount of time. The Employer may request further information about revised dates in accordance with the notice and evidence requirements in clause 62.16 of the Agreement.

20. Using parental leave in multiple blocks

- 20.1. Clause 62.18(b) 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.

- 20.2.** 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.
- 20.3.** 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 62.25 of the Agreement, will apply to all the blocks of leave taken.
- 20.4.** This approach is to be consistent with the general principle throughout clause 62 of the Agreement. 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.

21. Notice and evidence requirements for Primary Caregiver parental leave

- 21.1.** Under clause 62.16(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 and whether they intend to take the leave in a single block or use the leave flexibly. 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 62.16(b) of the Agreement.
- 21.2.** The Employee must also provide a statutory declaration containing the details specified in clause 62.16(a) of the Agreement and may also be required to provide the evidence outlined in clause 62.16(c) of the Agreement, to confirm the birth or adoption of the Child.
- 21.3.** The statutory declaration required under clause 62.16(a) of the Agreement, 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.
- 21.4.** 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 62.6 of the Agreement.
- 21.5.** 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 62.6 of the Agreement.

- 21.6.** A statutory declaration in the terms described in clause 62.16 of the Agreement should in most cases be sufficient to satisfy the eligibility requirement. However, the evidence required to satisfy a reasonable person that the Employee will be the Primary Caregiver of the Child will vary depending on the circumstances of each individual case.
- 21.7.** 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 62.16(a) of the Agreement provides insufficient evidence to satisfy a reasonable person 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.

22. Calculating rate of pay for paid parental leave

- 22.1.** Under clause 62.25(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 (excluding any Pre-Natal Leave taken in accordance with clause 62.7 of the Agreement) by the Employee over the preceding three years from the proposed commencement date of parental leave ('Averaging Period').
- 22.2.** An Employee who is a Shift Worker is entitled to be paid shift allowances equal to any shift allowances to which the Employee would have been entitled to but for their period of paid Primary Caregiver Parental Leave or Additional Paid Secondary Caregiver Parental Leave in accordance with clause 43.5 of the Agreement.
- 22.3.** 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.
- 22.4.** Under clause 62.25(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.
- 22.5.** Clause 62.25(c) of the Agreement stipulates periods of service which fall within the averaging period which are excluded from the calculation. In applying clause 62.25(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.
- 22.6.** 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.
- 22.7.** Where an Employee's Averaging Period would be entirely excluded under clause 62.25(c) of the agreement, the average number of weekly hours will be taken as at the Employee's substantive weekly hours applicable prior to their leave or temporary reduction in hours. For example, Maha is about to commence a second period of parental leave. For the three years prior to the proposed commencement date of the second period of parental leave, Maha was either on a period of parental leave or working at a reduced time fraction after returning from her first period of parental leave. As both periods are excluded from the averaging period, Maha's second period of parental leave will be paid at the substantive time fraction immediately prior to commencing the first period of parental leave.

23. Superannuation contributions in respect of Primary Caregiver parental leave

- 23.1. 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 41.5 (Superannuation) of the Agreement.
- 23.2. 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 104 weeks.
- 23.3. 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.
- 23.4. If the Employee extends their parental leave under clause 62.23 of the Agreement, superannuation contributions will only be paid with respect to the first 104 weeks of the Employee's parental leave and the lump sum contribution will not be made until the Employee returns to work.
- 23.5. The quantum of the superannuation contribution will be calculated in accordance with clause 41.5(e) of the Agreement.
- 23.6. Superannuation contribution under clause 41.5 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.

24. Progression for Primary Caregivers

- 24.1. 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 31 (Performance Development Progression) of the Agreement. For further information please consult clause 31.6 of the Agreement and the Performance Development and Progression common policy.

25. Interaction between parental leave and redeployment

- 25.1. 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).
- 25.2. Employers must ensure that Employees on parental leave are not declared surplus as a result of taking parental leave.

26. Returning from a period of parental leave

- 26.1. Consistent with clause 10 of the Agreement, 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 62.30(c)(i) of the Agreement on reasonable business grounds.
- 26.2. A request to return to work at a reduced time fraction under clause 62.30(c) of the Agreement must be treated and responded to in the same manner as a request under clause 10 (Flexible Working Arrangements – Specific Circumstances) of the Agreement.

27. Keeping in touch days

- 27.1. 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.
- 27.2. 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.
- 27.3. 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.
- 27.4. An Employee will be paid their normal wage and accumulate leave entitlements for each keeping in touch day or part day worked.
- 27.5. Keeping in touch days may be used by the Employee, for example to:
 - 27.5.1. participate in work related training or team meetings,
 - 27.5.2. support the Employee's transition back into the workplace after a period of parental leave,
 - 27.5.3. allow an Employee, otherwise on parental leave, to become familiar with new or updated processes,
 - 27.5.4. take part in forward planning discussions or a meeting that may affect their role.

28. Effect of Parental Leave on Long Service Leave Accruals

- 28.1. Consistent with clause 69.5(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.

29. Extended Family Leave

- 29.1. Where an Employee wishes to take extended family leave, the Employee will be required to acknowledge in writing that in accordance with clause 62.33(d) of the Agreement they may on their return to the workplace not be able to return to their substantive position and may be reallocated other duties.
- 29.2. Consistent with clause 62.33(b) of the Agreement, an Employee must make an application for Extended Family Leave each year they are seeking the leave.

30. Special parental leave

- 30.1. 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 (certified period/s) as necessary, as follows:
 - 30.1.1. where the pregnancy terminates during the first 12 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 56 of the Agreement;

30.1.2. 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 56 of the Agreement;

30.1.3. 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 62.3 of the Agreement and thereafter, to unpaid special maternity leave.

31. Effect of casual conversion on an Employee's parental leave entitlements

31.1. Consistent with the Government's commitment to promote more secure forms of employment, where a Regular Casual Employee is converted to ongoing employment under clause 19.5 of the Agreement, within 104 weeks of the date of birth or adoption of their Child, the Employer should reasonably consider any request by the converted Casual Employee to access the paid and unpaid leave parental leave entitlements at clause 62.3 of the Agreement up to the 2-year anniversary of the birth or placement date.

Making decisions under this policy

Under s.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 62 of the Agreement 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

Common Policies

- Use of Casual Employment
- Other Leave
- Personal/Carers Leave
- Reproductive Health and Wellbeing Leave
- Shift Work
- Compassionate Leave
- Long Service Leave
- Performance Development and Progression

- Surrogacy Leave
- Foster and Kinship Care
- Review of Actions

All policies can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.

Authorised by Industrial Relations Victoria:

Key Details	Date
Version	Final as approved
Date	April 2025

If you print and store this document, you may be looking at an obsolete version. Always check the latest version of this document at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>.