



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

**St John Ambulance Australia (Victoria) Inc T/A St John Ambulance
Victoria**
(AG2023/3760)

ST JOHN AMBULANCE VICTORIA NON-EMERGENCY PATIENT TRANSPORT ENTERPRISE AGREEMENT 2023

Ambulance and patient transport

COMMISSIONER YILMAZ

MELBOURNE, 2 NOVEMBER 2023

*Application for approval of the St John Ambulance Victoria Non-Emergency Patient
Transport Enterprise Agreement 2023*

[1] An application has been made for approval of an enterprise agreement known as the *St John Ambulance Victoria Non-Emergency Patient Transport Enterprise Agreement 2023* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by St John Ambulance Australia (Victoria) Inc T/A St John Ambulance Victoria. The Agreement is a single enterprise agreement.

[2] The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the Fair Work Act, that commenced operation on 6 June 2023.

[3] Under transitional arrangements, amendments made by Part 14 of Schedule 1 to the Amending Act in relation to genuine agreement requirements for agreement approval applications apply where the notification time for the agreement was on or after 6 June 2023. The genuine agreement provisions in Part 2-4 of the Fair Work Act, as it was just before 6 June 2023, continue to apply in relation to agreement approval applications where the notification time for the agreement was before 6 June 2023. Question 18 of the Form F17A provides that the notification time for the Agreement was 10 September 2021. However, this date represents the recommencement of bargaining, the parties first agreed to bargain and a NERR was distributed to employees in April 2017, therefore the notification time was April 2017.

[4] Under transitional arrangements, amendments made by Part 16 of Schedule 1 to the Amending Act in relation to the better off overall test requirements for agreement approval applications apply where the agreement was made on or after 6 June 2023. The better off overall test provisions in Part 2-4 of the Fair Work Act, as it was just before 6 June 2023,

continue to apply in relation to agreement approval applications where the agreement was made before 6 June 2023. Question 25.2 of the Form F17 provides that the Agreement was made on 4 October 2023.

[5] The Notice of Employee Representational Rights sent to employees on 17 April 2017 and lodged with the Agreement contained an error as it refers to the Agreement as “St John Ambulance Australia (Victoria) Non-Emergency Patient Transport Enterprise Agreement 2017”. I note that this appears to be an earlier name of the Agreement, referring to when the year the NERR was sent. As the notification time for the Agreement was before 6 June 2023, I am satisfied that in all of the circumstances and having regard to the Full Bench decision in *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others*,¹ this constitutes a minor procedural or technical error for the purpose of s.188(2) of the Act, as it was just before 6 June 2023. Further, I am satisfied that the employees covered by the Agreement were not likely to be disadvantaged by the error.

[6] At question 22 of the Form F17A filed by the Applicant, they have indicated that there was a typographical error in relation to the ATA pathway clause changing the word ‘off’ to ‘of. They informed the Commission, that employees were advised of this during the access period on 22 September 2023 and were provided with an amended copy of the Agreement. Voting commenced as scheduled on 26 September 2023, 4 clear days after the amended Agreement was provided to employees with an explanation for the correction, effectively resulting in an access period that was not 7 clear days prior to the start of the voting process as required in s.180(4). However, as the original finalised Agreement was provided to the parties on 8 September 2023, and the amendment of one word in clause 41.1 was made to reflect the prior approach to an employee discount in relation to the Diploma program, I am satisfied that the effect was a minor procedural error and that employees will not be disadvantaged by the procedural error. I therefore confirm this error will be disregarded pursuant to s.188(2) of the Act as it was just before 6 June 2023.

[7] I am satisfied that each of the requirements of ss.186, 187 and 188 are relevant to this application for approval and have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in ss.186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[8] The unregistered organisation, Victorian Ambulance Union Incorporated being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[9] The Agreement is approved and in accordance with s.54, will operate from 9 November 2023. The nominal expiry date of the Agreement is 30 June 2027.

¹ [2019] FWCFB 318.



COMMISSIONER

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**St John Ambulance Victoria Non-Emergency
Patient Transport Enterprise Agreement
2023**

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SCHEDULE 1 - CLASSIFICATIONS

SCHEDULE 2 – RATES OF PAY AND ALLOWANCES

SCHEDULE 3 – PARENTAL LEAVE

Section 1 - Application and operation of this Agreement

PART 1

1. TITLE

This Agreement will be known as the St John Ambulance Victoria Non-Emergency Patient Transport Enterprise Agreement 2023.

2. DEFINITIONS AND INTERPRETATION

In this document, unless the contrary intention appears:

Accredited Representative of a Union means an officer or employee of a Union, or a workplace delegate accredited by an authorised officer of a Union.

Adult means someone who is over 18 years of age.

Agreement means the St John Victoria Ambulance Non-Emergency Patient Transport Enterprise Agreement 2023.

Award means the *Ambulance and Patient Transport Industry Award 2020* [MA000098].

Casual Employee is as defined within the *Fair Work Act*.

Continuous service has the same meaning as in section 117 of the *Fair Work Act*.

De Facto Partner is as defined in the *Fair Work Act* and means:

- (a) a person who, although not legally married to the Employee, lives with the Employee in a relationship as a couple on a genuine domestic basis (whether the Employee and the person are of the same sex or different sexes); and
- (b) includes a former De Facto Partner of the Employee.

Employee means an Employee of the Employer who is employed in Non-Emergency Patient Transport in the classifications set out at Schedule 1 of this Agreement.

Employer means St. John Ambulance Australia (Victoria) Inc.

Excessive leave accrual means an accrual of annual leave more than 8 weeks, or 10 weeks paid annual leave for a shiftworker.

Fair Work Act means the *Fair Work Act 2009* (Cth), as may be amended from time to time and any successor to that act.

FWC means the Fair Work Commission or its successor.

Immediate Family is as defined in the *Fair Work Act* and means:

- (a) a spouse, De Facto Partner, child, parent, grandparent, grandchild, or sibling of the Employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or De Facto Partner of the Employee.

Long Term Casual Employee means a casual Employee who satisfies the criteria in section 66B(1) of the *Fair Work Act*, or who has been employed on a regular and systematic basis by the Employer for a sequence of periods of employment during a period of at least 12 months and who has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

NES means the National Employment Standards set out in the *Fair Work Act*.

Ordinary hourly rate means the hourly rate for the Employee's classification specified in Schedule 1, plus any allowances expressly specified as being included in the Employee's ordinary hourly rate or as being payable for all purposes.

Party or Parties means the Employer, the Union and the Employees in classifications listed in Schedule 1 of this Agreement.

Public Holiday means a day that is a public holiday pursuant to clause 35.

Shiftworker means an Employee who works at least 13 weekend shifts per year and/or is rostered to work varying start times.

Union means the Victorian Ambulance Union.

3. COMMENCEMENT DATE AND PERIOD OF OPERATION

- 3.1 This Agreement will commence operation seven (7) days after it is approved by the FWC and will have a nominal expiry date of 30 June 2027.
- 3.2 Alterations to conditions of employment provided for in this Agreement will apply with effect from the commencement date of this Agreement, unless otherwise stated.

4. RENEGOTIATION PERIOD

- 4.1 With the aim of avoiding protracted negotiations for a new Agreement, the Parties agree to a renegotiation period. The renegotiation period will be from 1 January 2027 until 30 June 2027. The aim of the renegotiation period is to permit a new agreement to be reached prior to the nominal expiry date of this Agreement.
- 4.2 To meet this objective, the Parties agree that:
- (a) each will provide to the other any proposals for change to the Agreement by 30 November 2026; and
 - (b) they will meet regularly to progress negotiations in good faith. Small working groups may be established to examine areas of disagreement; and
 - (c) the person/s responsible for negotiating will bring with them the necessary authority to finalise an agreement; and
 - (d) if agreement is not reached by 30 June 2027, the Parties will discuss whether they should seek the assistance of a mutually agreed conciliator or the FWC. This does not prevent the Parties seeking assistance, by agreement, on any individual issue which is creating an impasse; and

- (e) should conciliation be sought, then the Parties to the conciliation may agree to an extension to the renegotiation period.
- 4.3 During this period the Parties will not act in a manner that is designed to frustrate good faith bargaining.

5. APPLICATION OF AGREEMENT AND PARTIES COVERED

5.1 This Agreement applies to and covers:

- (a) the Employer; and
 - (b) Employees employed in the classifications listed in Schedule 1 to this Agreement.
- 5.2 In accordance with Part 2-8 of the *Fair Work Act*, where there is a transfer of business to a new Employer, the new Employer is bound by this Agreement as a transferable instrument to the extent that it relates to the whole or part of the business transfer.

6. RELATIONSHIP TO PARENT AWARD

- 6.1 This Agreement shall incorporate the provisions of the Award as at the date of approval by the FWC of this Agreement, provided that where there is any inconsistency between this Agreement and the Award, the Agreement shall prevail to the extent of the inconsistency.
- 6.2 No Employee will, on balance, have their overall pay and conditions reduced because of the making of this Agreement.
- 6.3 A dispute or grievance that is being considered pursuant to clause 30 of the Award at the time this Agreement commences operation may continue to be considered pursuant to clause 13 (Resolution of Disputes) of this Agreement.

7. RELATIONSHIP TO NES

- 7.1 This Agreement will be read and interpreted in conjunction with the NES. Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

8. ANTI-DISCRIMINATION AND WORKPLACE DIVERSITY

- 8.1 The Parties covered by this Agreement respect and value the diversity of the workforce and aim to prevent and eliminate discrimination based on race, colour, sex, sexual preference, gender, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, neurodiversity, social origin, or any other attributes protected by anti-discrimination legislation.
- 8.2 The Employer recognises the importance of workplace diversity and inclusion. The Employer will strive to create a diverse workforce and an environment that recognises, values, utilises and reflects the diverse society in which we live. In this context, diversity includes cultural diversity, Aboriginal and Torres Strait Islander identity, sexuality, age, gender identity, ability, neurodiversity, social disadvantage, and carer responsibilities.
- 8.3 Nothing in this clause is to be taken to affect:

- (a) any different treatment (or treatment having different effects) which is specifically exempted under anti-discrimination legislation; or
- (b) an Employee, Employer or Union pursuing matters of discrimination in any State or Federal jurisdiction, including by application to the Australian Human Rights Commission; or
- (c) the exceptions in section 351(2) and 772(2) of the *Fair Work Act* or the operation of sections 772(3) and 772(4) of the *Fair Work Act*.

8.4 The Employer will act in accordance with its obligations under:

- (a) the *Equal Opportunity Act 2010* (Vic); and
- (b) the *Charter of Human Rights and Responsibilities 2006* (Vic); and
- (c) the *Gender Equality Act 2020* (Vic).

8.5 These obligations apply to the Employer but do not form part of the Agreement.

PART 2 - FLEXIBLE WORK

9. FLEXIBLE WORK

9.1 The Parties are committed to providing a range of flexible working arrangements to give Employees a meaningful level of control over when, where, and how work is accomplished.

9.2 These reflect a genuine commitment to support both individual flexibility and business performance needs, while recognising that not all forms of flexibility will be suitable for all roles at any time.

9.3 Several provisions in this Agreement are available to facilitate an individual's need for flexibility, consistent with business requirements and legislative obligations.

Clause	Title	Summary of entitlement (see clause for full entitlement and any conditions)
10	Individual Flexibility Arrangement (IFA)	An IFA may vary certain provisions of the Agreement by agreement between an Employee and the Employer.
11	Flexible Working Arrangements – Specific Circumstances	Under s65 of the <i>Fair Work Act</i> , Employees in circumstances as defined in the legislation may request flexible working arrangements. This includes where an Employee: <ul style="list-style-type: none"> • is pregnant; • is the parent, or has responsibility for the care, of a child who is of school age or younger; • is a carer (within the meaning of the <i>Carer Recognition Act 2010</i>); • has a disability; • is 55 or older;

		<ul style="list-style-type: none"> • is experiencing family and domestic violence; or • provides care or support to an Immediate Family or household member who is experiencing family and domestic violence.
16	Part-time Employment	Part time employment may be worked by agreement between the Employee and the Employer.
	Working from Home	An individual Employee and Employer may agree to work from home on a case-by-case basis, subject to operational requirements.
20	Hours of Work	An Employee (other than a shiftworker) can agree with the Employer to work their ordinary hours flexibly, within the span of hours, to best meet the Employer's work requirements and the Employee's personal and/or family circumstances.
42	Family and Domestic Violence Leave	An Employee experiencing family and domestic violence has an entitlement to additional leave and may request flexible work arrangements.
44 and Schedule 3	Parental Leave	An Employee can take parental leave pursuant to the <i>Fair Work Act</i> .

10. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

10.1 The Employer and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

- (a) the agreement deals with one or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
- (b) the arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by the Employer and Employee without coercion or duress.

10.2 The Employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the *Fair Work Act*; and
- (b) are not unlawful terms under section 194 of the *Fair Work Act*; and

- (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

10.3 The Employer must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Employer and Employee; and
- (c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- (d) includes details of:
 - (i) the terms of the Agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

10.4 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

10.5 The Employer or Employee may terminate the individual flexibility arrangement:

- (a) by giving no more than 28 days written notice to the other party to the arrangement; or
- (b) if the Employer and Employee agree in writing—at any time.

11. FLEXIBLE WORKING ARRANGEMENTS

11.1 Section 65 of the *Fair Work Act* provides that an eligible Employee may request a change in their working arrangements in any of the following circumstances:

- (a) the Employee is pregnant;
- (b) the Employee is the parent, or has responsibility for the care, of a child who is of school age or younger; or
- (c) the Employee is a carer (within the meaning of the *Carer Recognition Act 2010* (Cth)); or
- (d) the Employee has a disability; or
- (e) the Employee is 55 or older; or
- (f) the Employee is experiencing family or domestic violence; or
- (g) the Employee provides care or support to a member of the Employee's Immediate Family, or a member of the Employee's household, who requires care or support because the member is experiencing family and domestic violence.

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

11.2 Employees are eligible to make a request under section 65 of the *Fair Work Act* if:

- (a) for Employees other than casual Employees, the Employee has completed at least 12 months of continuous service with the Employer immediately before making the request; or
- (b) for casual Employees, the Employee is a regular casual Employee who has been employed for a sequence of periods of employment during a period of at least 12 months and who has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

A request made under this clause must be made in writing and set out details of the change sought and the reasons for the change.

11.3 Before responding to a request, the Employer must discuss the request with the Employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the Employee's circumstances having regards to:

- (a) the needs of the Employee arising from their circumstances; and
- (b) the consequences for the Employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

11.4 On receipt of a request by an Employee under this clause, the Employer must give the Employee a written response within 21 days, stating whether the Employer grants or refuses the request or, if, following discussion between the Employer and Employee, the Employer and Employee agree to a change to the Employee's working arrangements that differs from that set out in the request, set out the agreed change.

11.5 The Employer may only refuse the request on reasonable business grounds.

11.6 Without limiting what are reasonable business grounds for the purposes of clause 11.7, reasonable business grounds include any of the following:

- (a) that the new working arrangements requested by the Employee would be too costly for the Employer; or
- (b) that there is no capacity to change the working arrangements of other Employees, or recruit new Employees, to accommodate the new working arrangements requested by the Employer; or
- (c) that it would be impractical to change the working arrangements of other Employees, or recruit new Employees, to accommodate the new working arrangements requested by the Employer; or
- (d) that the new working arrangements requested by the Employee would be likely to result in a significant loss in efficiency or productivity; or
- (e) that the new working arrangements requested by the Employee would be likely to have a significant negative impact on customer service.

- 11.7 If the Employer refuses the request, the written response under clause 11 must include:
- (a) details of the reasons for the refusal, including the business grounds or ground for the refusal and how the ground or grounds apply, and
 - (b) whether or not there are any changes in working arrangements that the Employer can offer the Employee to better accommodate the Employee's circumstances; and
 - (c) if the Employer can offer the Employee such changes in working arrangements, set out those changes in working arrangements.
- 11.8 If the Employer and Employee reached an agreement under clause 11 on a change in working arrangements that differs from that initially requested by the Employee, the Employer must provide the Employee with a written response to their request setting out the agreed change or changes in working arrangements.
- 11.9 If the Employer refuses the request, the Employee may bring a dispute under clause 13 of the Agreement and the dispute may be arbitrated by the FWC in accordance with that clause. This will include disputes about whether the Employer had reasonable business grounds to refuse the request.

Note: An Employee may also make an application to the FWC in relation to Flexible Working Arrangements pursuant to section 65B of the *Fair Work Act*.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

12. CONSULTATION

12.1 This clause applies if the Employer:

- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
- (b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

12.2 For a major change referred to in clause 12.1(a):

- (a) the Employer must notify the relevant Employees of the decision to introduce the major change; and
- (b) clauses 12.3 to 12.9 apply.

12.3 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

12.4 If:

- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- (b) the Employee or Employees advise the employer of the identity of the representative;

the Employer must recognise the representative.

12.5 As soon as practicable after making its decision, the Employer must:

- (a) discuss with the relevant Employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the Employees; and
 - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (b) for the purposes of the discussion—provide, in writing, to the relevant Employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the Employees; and
 - (iii) any other matters likely to affect the Employees.

12.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

12.7 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

- 12.8 If a clause in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in clause 12.2(a) and subclauses 12.3 and 12.5 are taken not to apply.
- 12.9 In this clause, a major change is likely to have a significant effect on Employees if it results in:
- (a) the termination of the employment of Employees; or
 - (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - (d) the alteration of hours of work; or
 - (e) the need to retrain Employees; or
 - (f) the need to relocate Employees to another workplace; or
 - (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- 12.10 For a change referred to in clause 12.1(b):
- (a) the Employer must notify the relevant Employees of the proposed change; and
 - (b) clauses 12.11 to 12.15 apply.
- 12.11 The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- 12.12 If:
- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.
- 12.13 As soon as practicable after proposing to introduce the change, the Employer must:
- (a) discuss with the relevant Employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant Employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and

- (c) invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

12.14 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

12.15 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.

12.16 In this clause:

relevant Employees means the Employees who may be affected by a change referred to in subclause 12.1.

13. RESOLUTION OF DISPUTES

13.1 For the purposes of this clause, a dispute includes a grievance.

13.2 Unless otherwise provided for in this Agreement, a dispute about a matter arising under this Agreement or the NES set out in the *Fair Work Act*, other than termination of employment, must be dealt with in accordance with this clause. To avoid doubt, a dispute about termination of employment cannot be dealt with under this clause.

13.3 This clause does not apply to any dispute regarding a matter or matters arising while bargaining in relation to a proposed enterprise agreement.

13.4 The Union may raise a dispute and be a party to a dispute or in a representative capacity for an Employee or group of Employees.

13.5 A person covered by this Agreement may choose to be represented at any stage by a representative, including a Union representative or Employer's organisation, or a lawyer.

Obligations

13.6 The parties to the dispute and their representatives must genuinely attempt to resolve the dispute through the processes set out in this clause and must cooperate to ensure that these processes are carried out expeditiously.

13.7 Whilst a dispute is being dealt with in accordance with this clause, work must continue in accordance with usual practice, provided that this does not apply to an Employee who has a reasonable concern about an imminent risk to their health or safety, has advised the Employer of this concern and has not unreasonably failed to comply with a direction by the Employer to perform other available work that is safe and appropriate for the Employee to perform.

13.8 No person covered by this Agreement will be prejudiced as to the final settlement of the dispute by the continuance of work in accordance with this clause.

Agreement and Dispute Settlement Facilitation

13.9 For the purposes of compliance with this Agreement (including compliance with this dispute settlement procedure) if the chosen Employee representative is another Employee of the Employer, they must be released with pay by the Employer from normal duties for such periods of time as may be reasonably necessary to enable them to represent Employees concerning matters pertaining to the employment relationship including but not limited to:

- (a) investigating the circumstances of a dispute or an alleged breach of this Agreement; or

- (b) endeavoring to resolve a dispute arising out of the operation of this Agreement; or
- (c) participating in conciliation, arbitration, or any other agreed alternative dispute resolution process.

13.10 The release from normal duties referred to in this clause is subject to the proviso that it does not unduly affect the operations of the Employer.

Discussion of Disputes

13.11 The dispute must first be discussed by the aggrieved Employee(s) with the immediate supervisor of the Employee(s).

13.12 If the dispute is not settled, the aggrieved Employee(s) can require that the dispute be discussed with another representative of the Employer appointed for the purposes of this procedure.

Internal Process

13.13 If any party to the dispute who is covered by this Agreement refers the dispute to an established internal dispute resolution process, the matter must first be dealt with according to that process, provided that the process is conducted as expeditiously as possible and:

- (a) is consistent with the rules of natural justice; and
- (b) provides for mediation or conciliation of the dispute; and
- (c) provides that the Employer will take into consideration any views on who should conduct the review; and
- (d) is conducted with as little formality as a proper consideration of the dispute allows.

13.14 If the dispute is not settled through an internal dispute resolution process, the matter can be dealt with in accordance with the processes set out below.

13.15 If the matter is not settled either party to the dispute may apply to the FWC to have the dispute dealt with by conciliation.

Disputes of a Collective Character

13.16 The Parties acknowledge that disputes of a collective character concerning more than one Employee may be dealt with more expeditiously by an early reference to the FWC.

13.17 No dispute of a collective character may be referred to the FWC directly unless there has been a genuine attempt to resolve the dispute at the workplace level prior to it being referred to the FWC.

Conciliation

13.18 Where a dispute is referred for conciliation, a member of the FWC will do everything that appears to the member to be right and proper to assist the parties to the dispute to agree on settlement terms.

13.19 This may include arranging:

- (a) conferences of the parties to the dispute presided over by the member; and

- (b) for the parties to the dispute to confer among themselves at conferences at which the member is not present.

13.20 Conciliation before the FWC will be regarded as completed when:

- (a) the parties to the dispute have reached agreement on the settlement of the dispute; or
- (b) the member of the FWC conducting the conciliation has, either of their own motion or after an application by a party to the dispute, satisfied themselves that there is no likelihood that, within a reasonable period, further conciliation will result in a settlement; or
- (c) the parties to the dispute have informed the FWC member that there is no likelihood of agreement on the settlement of the dispute and the member does not have substantial reason to refuse to regard the conciliation proceedings as completed.

Arbitrations

13.21 If the dispute has not been settled when conciliation has been completed, a party to the dispute may request that the FWC proceed to determine the dispute by arbitration.

13.22 If a member of the FWC has exercised conciliation powers in relation to the dispute, the member must not exercise, or take part in the exercise of, arbitration powers in relation to the dispute if a party to the dispute objects to the member doing so.

13.23 Subject to this clause the determination of the FWC is binding upon the persons covered by this Agreement.

13.24 A determination of a single member of the FWC made pursuant to this clause may, with the permission of a Full Bench of the FWC, be appealed.

General Powers and Procedures of the FWC

13.25 Subject to any agreement between the parties in relation to a particular dispute and the provisions of this clause, in dealing with a dispute through conciliation or arbitration, the FWC may conduct the matter in accordance with Subdivision B of Division 3 of Part 5-1 of the *Fair Work Act*.

PART 4 - TYPES OF EMPLOYMENT AND CLASSIFICATIONS

14. TYPES OF EMPLOYMENT

14.1 Employees under this agreement will be employed in one of the following categories:

- (a) full-time.
- (b) part-time; or
- (c) casual.

14.2 At the time of engagement, the Employer will inform an Employee of the terms of their engagement and whether they are to be full-time, part-time or casual. This decision will then be recorded in a time and wages record.

15. FULL-TIME EMPLOYEES

15.1 A full-time Employee is an ongoing Employee engaged to work an average of 38 ordinary hours per week.

16. PART-TIME EMPLOYEES

16.1 A part-time Employee:

- (a) is engaged to work less than 38 ordinary hours per week or less than an average of 38 hours per week over a roster cycle;
- (b) has a regular pattern of work specifying the minimum and maximum average hours of work per week to be worked and averaged over a four-week period (28 days);
- (c) has rostered daily commencement and daily finishing times specified in a four-week roster cycle;
- (d) receives remuneration, leave and other paid entitlements, on a pro rata basis to a full-time Employee employed for 38 hours per week for that classification, according to the number of hours worked.

16.2 At the time of the engagement, the Employer and Employee will agree in writing on the average hours of work per week, as well as the days to be worked, hours to be worked each day and the actual starting and finishing times each day across a roster cycle. Such written agreement may be contained in a roster issued by the Employer and agreed to in writing by the Employee.

16.3 The Employee and the Employer may agree in writing to a variation in the number of average hours per week over time, as well as the days to be worked, hours to be worked each day and the actual starting and finishing times each day across a roster cycle, with all changes recorded in writing. Such written agreement may be constituted in a roster issued by the Employer and accepted in writing by the Employee.

16.4 The minimum shift length for a part-time Employee will be 4 consecutive hours.

16.5 An Employee may by mutual agreement agree to work additional hours at their ordinary rate of pay. Additional hours worked per week will be capped at 10 hours in any one week, provided also that the employee does not work in excess of an average of 38 hours per week over the roster cycle. All additional hours beyond this agreement will be considered overtime and paid in accordance with the overtime payment clause. All additional hours of work will be considered in line with fatigue procedures and policy. Any agreement for an Employee to work

additional hours in accordance with this paragraph will be recorded in writing on each occasion.

- 16.6 For the avoidance of doubt, a part-time employee is not obliged to work additional hours at their ordinary rate of pay and is entitled to overtime rates where there is no written agreement in accordance with clause 16.5.
- 16.7 Applicable Public Holiday penalties will apply to part-time Employees for work performed on a gazetted public holiday.

17. CASUAL EMPLOYEES

- 17.1 On each occasion a Casual Employee is required to attend work the Employee will be paid for a minimum of 3 hours' work, except by agreement between the Employer and the Employee.

18. CASUAL LOADING

- 18.1 For each ordinary hour worked, a Casual Employee must be paid:
- (a) the ordinary hourly rate for the classification in which they are employed; and
 - (b) a loading of:
 - (i) 25% of the ordinary hourly rate for all work on weekdays.
 - (ii) 75% of the ordinary hourly rate for all work on Saturdays and Sundays; and
 - (iii) 100% of the ordinary hourly rate for all work on public holidays.
- 18.2 The casual loadings prescribed in this clause are paid instead of any weekend or public holiday rate that would otherwise apply.
- 18.3 The casual loadings prescribed in this clause will not be paid for overtime hours worked.
- 18.4 Casual Employees have no expectation of ongoing regular employment, are not entitled to accrued days off (ADOs), paid personal leave/carer's leave and compassionate leave, parental leave (except for an eligible casual), annual leave, public holidays, notice of termination or redundancy pay.
- 18.5 The overtime rates prescribed in this clause will be paid to a Casual Employee in the following circumstances:
- (a) for work performed more than rostered hours per shift; and
 - (b) for work performed more than 38 hours per week.

19. OFFERS AND REQUESTS FOR CASUAL CONVERSION.

- 19.1 Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the [NES](#).
- 19.2 Disputes about offers and requests for casual conversion under the [NES](#) are to be dealt with under clause 13 - Dispute Resolution.

PART 5 - HOURS OF WORK

20. ORDINARY HOURS OF WORK

20.1 Ordinary hours and roster cycles

- (a) The ordinary hours of work for a full-time Employee are 38 hours per week or an average of 38 hours per week spread over the Employee's roster cycle.
- (b) The ordinary hours of work for a part-time Employee will be in accordance with clause 16 - Part-time Employees.
- (c) For the purposes of this clause, the working week will commence at midnight on a Sunday.
- (d) Subject to mutual agreement, Employees may work ordinary hours on a 10/14 roster arrangement.

20.2 Additional leave / accrued days off

- (a) An Employer may roster an Employee to regularly work 40 ordinary hours per week, in which case the Employee is entitled to either:
 - (i) 12 days' paid leave for each year of such work, to be added to the Employee's annual leave: or
 - (ii) one accrued day off (ADO) in each 4-week period in accordance with the roster. ADOs are to be taken with the Employee's normal rostered day(s) off (RDO(s)).
- (b) An Employer and an Employee may only change the Employee's ADO by mutual agreement.

Where an Employee's ADO falls on a public holiday, another ADO will be determined by the Employer to be taken instead. This alternative ADO will be taken within the same 4-week cycle where practical.

20.3 Maximum consecutive shifts

- (a) No employee will be required to work more than 6 consecutive 10 hour shifts without 48 hours off duty.
- (b) No employee will be required to work more than 2 consecutive 12 hour shifts without 48 hours off duty.
- (c) No employee will be required to work more than 4 consecutive night shifts, without a period off duty of two calendar days after the day on which the last shift finished.
- (d) Any Employee who agrees to work more than the above number of consecutive shifts will be paid for the further consecutive shifts worked at 300% of the ordinary hourly rate until the required period off duty is provided.
- (e) For the purposes of this clause, the Employee is not taken to work a further shift where the Employee works for up to one hour beyond the finishing time of their normal rostered shift for the purpose of completing a case which commenced during that shift.

21. ROSTERING ARRANGEMENTS

- 21.1 This clause applies to full-time and part-time employees only.
- 21.2 Hours of duty may be worked Monday to Sunday in accordance with rosters.
- 21.3 Rosters must be posted in a conspicuous place at each workplace. For full-time and part-time Employees, rosters must show periods of duty of 28 days and be posted at least 28 days in advance of the roster commencing.
- 21.4 The Employer will, wherever practicable, exhibit rotating rosters.
- 21.5 Rosters will show:
- (a) starting and finishing times and time off, on a continuing basis;
 - (b) on-call branch station posting;
 - (c) on-call duty for each 14 days; and
 - (d) where possible approved leave periods as determined in accordance with the provisions of this Agreement relating to Leave and Public Holidays.
- 21.6 Saturday and Sunday duty will be equitably distributed between Employees.
- 21.7 For incidents of sickness of an Employee or other unforeseen circumstances, the duty periods prescribed by the roster may be temporarily altered by displaying a notice to that effect.
- 21.8 Where individual and temporary shift changes are required, the Employer will notify an Employee at least 5 days in advance or as otherwise agreed by mutual agreement between the Employer and the Employee.
- 21.9 The arrangement of ordinary working hours is to be by agreement between the Employer and majority of Employees in the workplace or part of the workplace.
- 21.10 An employee will not be required to work on a shift that commences after 23:00 and prior to 05:00.

22. BREAKS

22.1 Meal breaks

An Employee is entitled to a paid meal break of 30 minutes during each shift. The meal break will count as time worked and will be taken at a time and place directed by the Employer.

22.2 Paid rest breaks

- (a) Where practical, Employees are entitled to two 10 minute rest breaks each day, counted as time worked, as follows:
- (i) the first, between starting work and the usual meal break; and
 - (ii) the second between the usual meal break and finishing work.

22.3 Changing time

Where an Employee is not permitted to wear their uniform home, a period of 10 minutes immediately preceding the end of each period of duty will be allowed for the Employee to wash, shower and/or to change clothing.

PART 6 - WAGES AND ALLOWANCES

23. MINIMUM WAGE RATES

- 23.1 From the commencement of the Agreement, the Employer will pay Employees the minimum rates for ordinary hours worked according to the tables in Schedules 1 and 2 of this Agreement.
- 23.2 Wages will be increased during the nominal life of this Agreement on 1 July each year by 3% or the Award rate increase as determined in the Fair Work Commission's Annual Wage Review of that year, whichever is higher. All allowances, other than the on-call allowance (Clause 24.3), will be increased by the same percentage as the annual wage increase on 1 July each year.
- 23.3 Employees will progress through pay points for their classification on an annual basis, on the anniversary date of their employment. At commencement of the Agreement, any employee who has been at paypoint 3 for their classification for at least 12 months will progress to paypoint 4 immediately, and that date will be their anniversary date for the purposes of paypoint progression thereafter.
- 23.4 Payment of wages
- (a) Wages will be paid fortnightly by electronic funds transfer into the Employee's nominated bank or financial institution account. Payment will be made no later than Wednesday in the pay week. Where a public holiday falls in that week, payment will be made by Thursday.
 - (b) Payslips will separately identify any allowance paid, except family and domestic violence leave taken which will be recorded as normal hours worked.
- 23.5 Payment on termination of employment
- (a) The Employer will pay an Employee no later than 7 days after the day on which the Employee's employment terminates:
 - (i) the Employee's wages under this Agreement for any complete or incomplete pay period up to the end of the day of termination; and
 - (ii) all other amounts that are due to the Employee under this Agreement and the [NES](#).
- 23.6 The requirement to pay wages and other amounts under this clause is subject to further order of the FWC and the Employer making deductions authorised by the Agreement or the *Fair Work Act*.
- 23.7 The Employer will not terminate an Employee's employment unless the Employer has given the Employee the required period of notice (if any) or made a payment in lieu of notice.

24. WAGE RELATED ALLOWANCES

See Schedule 2 for a summary of monetary allowances.

24.1 Higher duties

- (a) Where the Employer requires an Employee to perform duties of a higher classification, the Employee will be paid at the rate applicable to the higher classification including for paid leave or any public holiday(s) which occur during the period when the higher duties are being performed.

- (b) Employees will not be required to fill a vacant position in an acting capacity for more than 3 months.

24.2 Shift allowance

A shift allowance of \$7.82 per hour per shift between 6pm and 10pm, and \$10.72 per hour per shift between 10pm and 7am is payable to the Employee.

The Employer will complete a payroll reconciliation on a 4-weekly basis to ensure that each Employee is better off overall when compared to the Award. If, as a result of that reconciliation process, the conclusion is that an Employee is not better off overall when compared to the Award, the Employer will make a payment to the Employee of an amount equal to the difference between the amount which would have been payable to the Employee under the Award had it applied to the Employee, and the amount payable to the Employee under the Agreement plus an additional 1% of that difference (**Reconciliation Payment**). The Reconciliation Payment will be paid to the Employee as an adjustment in the pay as soon as possible following the payroll reconciliation process.

24.3 On-call allowance

An on-call allowance of \$9.00 per hour or part hour is payable to an Employee who, in accordance with an on-call roster, is rostered off duty but is required to be ready to respond to a call. The on-call allowance is not subject to annual increases. The Employer may elect to increase this specific allowance at its discretion.

25. EXPENSE-RELATED ALLOWANCES

25.1 Meal allowances

- (a) A meal allowance of \$18.36 per shift is payable to an Employee to compensate for the cost of purchasing a meal away from the Employee's branch or usual place of work except where a meal has been arranged by the Employer.
- (b) A meal allowance of \$4.85 is payable to an Employee who is required to work for more than 5 consecutive hours without receiving a meal break.
- (c) A spoilt meal allowance of \$18.36 is payable to an Employee called back to duty before having consumed a meal during a meal break. The Employee may be required to present satisfactory evidence of spoilage to the Employer.
- (d) An overtime meal allowance of \$22.98 is payable to an Employee who is required to work overtime for more than 2 hours beyond the Employee's normal finishing time.

25.2 Travelling allowance

- (a) An Employee required to travel on duty, is entitled to be reimbursed for all reasonably incurred expenses of fares, meals and accommodation.
- (b) An Employee required to report for duty to a workplace, other than that to which the Employee is normally rostered or posted:
 - (i) is entitled to travel to and from such workplace in the Employer's time and fares and incidental expenses will be paid by the Employer; or
 - (ii) if required to use their own motor vehicle in connection with the Employer's business, the Employee is entitled to be reimbursed at

the rate of \$0.96 per kilometre.

- (iii) This clause will not apply to an Employee who changes roster by agreement with another Employee.

25.3 Relieving allowance

- (a) An Employee required to relieve another Employee and to live away from home is entitled to receive:
 - (i) an allowance to cover the cost of reasonable accommodation and the reasonable costs of cleaning items of uniform unless the Employer provides such accommodation including laundry facilities;
 - (ii) travelling allowance in accordance with clause 25.2 and
 - (iii) an allowance to cover meal expenses as follows:

	\$
Breakfast	18.36
Lunch	36.75
Dinner	53.13
TOTAL	110.24

- (b) Employees returning home, for example during rostered breaks, will not normally be paid a meal allowance.
- (c) Employees receiving a meal allowance under clause 25.1 do not receive a meal allowance under this clause
- (d) Employees required to live away from home, other than during a period of training, are entitled to be paid an allowance of \$29.86 per night.

25.4 Supervision allowances

- (a) Employees who are required by the Employer to supervise a student observer receive a student observer allowance of \$1 per hour up to a maximum of 10 hours per shift.
- (b) ATAs who are required by the Employer to supervise a PTO in their first 100 hours of training, or an Employee in the PTO to ATA training pathway during their 400 hours of training, receives an allowance of \$2 per hour up to a maximum of 10 hours per shift.
- (c) Employees who are required by the Employer to work as clinical instructors receive a clinical instructor allowance of \$3.50 per hour.

25.5 Uniform and protective clothing allowance

- (a) The Employer will provide each operational employee with sufficient uniform to ensure they are able to attend for work appropriately attired to comply with the Employer's policy and always have a spare uniform available, and sufficient to allow reasonable laundering frequency.
- (b) Replacement of uniform items will be on a fair wear and tear basis and be approved by the Employee's manager.

25.6 Late notice of shift change

- (a) Where a full-time or part-time employee is asked to change their shift at short notice, and the start and/or finish time of the shift is changed by more than two hours, the Employee is entitled to a payment of \$20.00, in recognition of the inconvenience for the Employee.
- (b) For the purposes of this clause, "at short notice" means within 48 hours of the original commencement time of the shift.
- (c) Where the change to the shift time means that the Employee is no longer entitled to penalty rates or is entitled to a lesser penalty rate for that shift, the Employee will receive payment of the difference between what they would have been entitled to for the original shift and what they were paid for the shift actually worked.

26. SUPERANNUATION

26.1 Superannuation legislation

- (a) The rights and obligations in these clauses supplement those in superannuation legislation.

Note: Superannuation legislation, including the Superannuation Guarantee (Administration) Act 1992(Cth) the Superannuation Guarantee Charge Act 1992 (Cth), the Superannuation Industry (Supervision) Act 1993 (Cth) and the Superannuation (Resolution of Complaints) Act 1993 (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally can choose their own superannuation fund. If an Employee does not choose a superannuation fund, the Employer will check if a stapled superannuation fund exists. If not, any superannuation fund nominated in the Award applies.

26.2 Employer contributions

The Employer will make such superannuation contributions to a superannuation fund for the benefit of an Employee as will avoid the Employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that Employee.

26.3 Voluntary Employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an Employee may, in writing, authorise the Employer to pay on behalf of the Employee a specified amount from the post-taxation wages of the Employee into the same superannuation fund as the Employer makes the superannuation contributions provided for in clause 26.2.
- (b) An Employee may adjust the amount the Employee has authorised the Employer to pay from the wages of the Employee from the first of the month following giving three months' written notice.
- (c) The Employer must pay the amount authorised under this clause no later than 28 days after the end of the month in which the deduction authorised under this clause was made.

27. OVERTIME

27.1 Overtime Rates

Subject to the on-call provisions in clause 28, where an Employee works overtime the Employer will pay to the Employee the overtime rates as follows:

For overtime worked on	Overtime rate % of ordinary hourly rate
For any work exceeding the number of hours fixed as a day's, week's, or fortnight's work on:	
Monday to Friday—first 2 hours	150%
Monday to Friday—after 2 hours	200%
Saturday all day	200%
Sunday all day	200%
Work more than an Employee's rostered hours on a public holiday	250%
Work outside a spread of 12 hours from the commencement of the last previous rostered period of duty, provided that the overtime is not continuous with the next succeeding rostered period of duty	200%

- (a) In the calculation of overtime each day stands alone.
- (b) Casual loadings will not be paid for overtime hours worked.

27.2 Rest period after overtime

- (a) An Employee has at least 10 consecutive hours off duty between the work of successive days.
- (b) Where an Employee works overtime and does not have at least 10 consecutive hours off duty between workdays, they will be released from duty until they have had 10 consecutive hours off duty, without loss of pay for ordinary working time during such absences.
- (c) An Employee who is required to continue or resume work without having had 10 consecutive hours off duty will be paid at the rate of 200% until released from duty for 10 hours.
- (d) The Employee in (c) is then entitled to be released from duty under (b).

27.3 Time off instead of payment for overtime

- (a) An Employee and Employer may agree in writing to the Employee taking time off instead of being paid for a particular amount of overtime that has been worked by the Employee.
- (b) The period of time off that an Employee is entitled to take is equivalent to the overtime payment that would have been made.

- (c) Time off must be taken:
 - (i) within the period of 6 months after the overtime is worked; and
 - (ii) at a time or times within that period of 6 months agreed by the Employee and the Employer.
- (d) If the Employee requests to be paid for overtime covered by the agreement under this clause but not taken as time off, the Employer must pay the Employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 27.3(c), the Employer must pay the Employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) The Employer will not exert undue influence or undue pressure on an Employee in relation to a decision by the Employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An Employee may, under section 65 of the *Fair Work Act*, request to take time off, at a time or times specified in the request or to be subsequently agreed by the Employer and the Employee, instead of being paid for overtime worked by the Employee. If the Employer agrees to the request then clause 27.3 will apply for overtime that has been worked.
- (h) If, on the termination of the Employee's employment, time off for overtime worked by the Employee to which this clause applies has not been taken, the Employer must pay the Employee for the overtime at the overtime rate applicable to the overtime when worked.

28. ON-CALL

- 28.1 An Employee who is rostered to be on-call is entitled to an on-call allowance in accordance with clause 24.3.
- 28.2 Time on-call will not be counted as time worked unless an Employee is called out for duty. If called out for duty, the Employee will be paid at double their ordinary rate of pay with a minimum payment of four hours per call commencing from the time the call is made, provided that four hours has elapsed from the commencement of the previous call.
- 28.3 Nothing in this clause prohibits an Employee from temporarily leaving the workplace or home when rostered on-call after having made arrangements satisfactory to the Employer, for the proper conduct of the service.
- 28.4 An Employee will be free from on-call duty:
 - (a) every second weekend; and
 - (b) for at least 8 days in each 14 consecutive days.
- 28.5 No Employee will be rostered on-call from the time of ceasing duty immediately before the Employee's rostered day off until the time of commencing duty immediately after the rostered day off.
- 28.6 Except on weekends, public holidays or in cases of an emergency, an Employee will not be rostered on-call between 9.00am and 5.00pm.
- 28.7 An on-call roster will not require an Employee to be on-call for a period of less than 6 hours except by mutual consent between the Employer and Employee

concerned.

29. RECALL

29.1 An Employee who has completed a rostered shift of duty, who is not rostered on-call and is recalled to duty prior to the commencement of the Employee's next rostered shift and such recall is not continuous with any rostered shift, is entitled to payment at the rate of 200% of their ordinary hourly rate for all time worked with a minimum payment of one and a half hours.

30. STAND-BY

30.1 When an Employee, other than an Employee rostered on-call in accordance with clause 28 is required to stand by for any period outside the Employee's ordinary hours, this period will be counted as time worked.

31. PENALTY RATES

31.1 An Employee rostered to work ordinary hours between midnight Friday and midnight Sunday will be paid the following penalty rates:

Ordinary hours worked	Penalty rate full-time and part-time (as a % of the ordinary rate)	Casual penalty rate (including casual loading and expressed as a % of the ordinary rate)
Saturday and Sunday	150%	175%
Public holidays	250%	200%

32. RECLASSIFICATION

32.1 Where an Employee is moving from a PTO to an ATA position, they will be reclassified at the equivalent level based on years of service. By way of example, an PTO with 2 years' service (PTO2) transferring into an ATA position will be reclassified as an ATA2.

33. REIMBURSEMENT FOR REQUIRED CHECKS, QUALIFICATIONS AND VACCINATIONS

33.1 The Employer will reimburse the Employee for any checks, qualifications or vaccinations which the Employer requires as a condition of employment, such as Working with Children Checks, Police Checks and vaccinations.

PART 6 - LEAVE AND PUBLIC HOLIDAYS

34. ANNUAL LEAVE

34.1 Annual leave is provided for in the NES. All full-time Employees are entitled to a minimum of four weeks' annual leave per annum, with shiftworkers entitled to an additional week's leave.

- (a) Leave must be agreed in advance and approved prior to leave being taken.

34.2 Payment for annual leave

- (a) At the time of taking leave an Employee will be paid at the rate of ordinary time worked, plus any allowances, loading, shift allowances, or penalties which would have been received had the Employee not been on leave.
- (b) In addition, the Employer will pay a loading of 17.5% of the Employee's ordinary pay for ordinary hours the Employee would have worked had they not been on leave during that period.
- (c) While on annual leave, an Employee will be paid in accordance with their usual pay cycle.
- (d) Where an Employee is receiving a base rate of pay that is higher than the rate specified under this Agreement, the Employee is entitled to receive the higher rate while on a period of paid annual leave.

34.3 Excessive leave accruals

- (a) Excessive leave accrual means an accrual of paid annual leave more than 8 weeks, or 10 weeks for a shiftworker.
- (b) If an Employee has an excessive annual leave accrual, the Employer or Employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) If an Employer has genuinely tried to reach agreement with an Employee to take excessive leave but agreement is not reached, the Employer may direct an Employee to take paid annual leave in one or more periods, in writing, so long as the accrued annual leave balance does not fall below 6 weeks (when any other paid annual leave arrangements are taken into account).
- (d) A direction by the Employer under this clause:
 - (i) must not require the Employee to take any period of paid annual leave of less than one week;
 - (ii) must not require the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
 - (iii) must not be inconsistent with any leave arrangement agreed by the Employer and Employee.

- (e) An Employee to whom a direction has been given under this clause may request to take a period of paid annual leave as if the direction had not been given.
- (f) The Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave.
- (g) If an Employee has genuinely tried to reach agreement with the Employer, an Employee may request leave in one or more periods to reduce their excess leave, in writing, if:
 - (i) the Employee has had an excessive leave accrual for more than 6 months at the time of making the request; and
 - (ii) the Employee has not been given a direction under this clause that, when any other paid annual leave arrangements are considered, would eliminate the Employee's excessive leave accrual; and
 - (iii) the request is not inconsistent with any leave arrangement agreed by the Employer and Employee.
- (h) A request given by an Employee under this clause must not:
 - (i) if granted, result in the Employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks (when any other paid annual leave arrangements are taken into account);
 - (ii) provide for the Employee to take any period of paid annual leave of less than one week; or
 - (iii) provide for the Employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
 - (iv) be inconsistent with any leave arrangement agreed by the Employer and Employee.

34.4 The Employer must grant paid annual leave requested by an Employee in writing under this clause.

34.5 The NES provides for payment of accrued annual leave upon termination of employment. An Employee engaged for part of any year as a 7 day shiftworker, will be paid, in addition to any other amounts due, an amount equal to 1/48th of the Employee's ordinary pay for the period of employment as a 7 day shiftworker.

34.6 Where an Employee becomes sick during annual leave and immediately forwards a certificate from a medical practitioner, then the number of days specified in the certificate and on which the Employee would otherwise have worked, will be deducted from the Employee's personal leave credits and recredited to the Employee's annual leave entitlement.

34.7 Annual leave in advance

- (a) The Employer and the Employee may agree in writing to the Employee taking a period of paid annual leave before the Employee has accrued an entitlement to the leave.
- (b) An agreement must:

- (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
 - (ii) be signed by the Employer and the Employee and, if the Employee is under 18 years of age, by the Employee's parent or guardian.
- (c) If, on the termination of the Employee's employment, the Employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under this clause, the Employer may deduct from any money due to the Employee on termination an amount equal to the amount that was paid to the Employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.
- (d) The Employer must keep a copy of any agreement as an employee record.

34.8 Cashing out of annual leave

- (a) Annual leave may be cashed out in accordance with this clause.
- (b) Each cashing out of a particular amount of paid annual leave is subject to a separate signed agreement which states:
 - (i) the amount of leave to be cashed out and the payment to be made to the Employee for it;
 - (ii) the date on which the payment is to be made.
- (c) If the Employee is under 18 years of age, the agreement must also be signed by the Employee's parent or guardian.
- (d) The payment must not be less than the amount that would have been payable had the Employee taken the leave at the time the payment is made.
- (e) An agreement must not result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (f) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (g) The Employer must keep a copy of any agreement as an employee record.

35. PUBLIC HOLIDAYS

35.1 Public holidays are provided for in the NES.

35.2 If a public holiday to which the Employee is entitled to payment falls within the period of an Employee's annual leave, the period of annual leave will be increased by one day in respect of that public holiday.

35.3 Where an Employee works on a public holiday or where a public holiday occurs on the Employee's rostered day off, within 4 weeks of the date on which such holiday occurs the Employee is entitled to:

- (a) one and a half extra days' pay; or
- (b) equal time off in one period, of which 7 days' notice will be given; or
- (c) one and a half days added to annual leave.

35.4 Public holiday substitution

- (a) The Employer and an Employee may agree to substitute another day for a day that would otherwise be a public holiday under the [NES](#).

- (b) The Employer and an Employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

36. PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE

- 36.1 An Employee is entitled to 114 hours paid personal/carers leave per annum. Personal/carers Leave accrues on a pro rata basis. Unused personal/carers leave accumulates from year to year.
- 36.2 Personal/carers leave may be taken as sick leave or as carer's leave.
 - (a) Sick leave is absence from work due to personal illness or injury.
 - (b) Carer's leave is absence from work for the purposes of caring for an Immediate Family member or household who requires care or support because of a personal illness, injury or emergency affecting the member.
- 36.3 An employee who takes personal leave will be paid the number of hours of personal leave that they would have worked for that shift (excluding overtime).
- 36.4 An Employee must comply with the notice and evidence requirements for taking personal leave in the NES. Where practicable, the Employee must provide a minimum of 2 hours' notice before commencement if the Employee is unable to attend the workplace at the rostered commencement time.

37. FAMILY AND DOMESTIC VIOLENCE LEAVE

- 37.1 Family and domestic violence leave is provided for in the NES.

38. COMMUNITY SERVICE LEAVE

- 38.1 Community service leave is provided for in the NES.

39. PARENTAL LEAVE AND RELATED ENTITLEMENTS

- 39.1 Parental leave and related entitlements are provided for in the NES - see Schedule 3.
- 39.2 In addition to those entitlements, an Employee who is entitled to unpaid parental leave (including adoption leave) will be entitled to four weeks' paid parental leave at the same rates of pay as provided under the NES. To qualify for the four weeks' paid leave, the Employee must be the primary carer for a newborn or adopted child and have worked over 1,000 hours in the 12 months immediately prior to the commencement of parental leave.

PART 7 -TERMINATION OF EMPLOYMENT AND REDUNDANCY

40. TERMINATION OF EMPLOYMENT

40.1 Notice of termination by Employer

The Employer will give the Employee notice of termination in accordance with Table 1.

Table 1—Period of notice

Employee's period of continuous service with the Employer at the end of the day the notice is given	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years' service	4 weeks

Employees over 45 years old who have completed at least 2 years' continuous service when they receive notice will be given an additional week of notice.

40.2 Notice of termination by an Employee

- (a) An Employee must give notice of termination to the Employer in accordance with Table 1 above, save that Employee does not have to give additional notice based on the age of the Employee.
- (b) If an Employee who is less than 18 years old does not give the period of notice required under this clause, then the Employer may deduct up to one week's wages from the wages due to the Employee.
- (c) If the Employer has agreed to a shorter period of notice than that required under this clause, then no deduction will be made under this clause.

40.3 Job search entitlement

Where an Employer has given notice of termination to an Employee, the Employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the Employee after consultation with the Employer. The Employee must, at the request of the Employer, produce proof of attendance at an interview.

41. REDUNDANCY

41.1 Redundancy pay is as provided for in the [NES](#).

41.2 Transfer to lower paid duties on redundancy

- (a) If, because of redundancy, an Employee is transferred to new duties to which a lower ordinary rate of pay applies, the Employer may:
 - (i) give the Employee notice of the transfer of at least the same length as the Employee would be entitled to under this Agreement as if it were a notice of termination; or
 - (ii) transfer the Employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the Employer pays the Employee an amount equal to the difference between the ordinary rate of pay of the Employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the Employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the Employee in the second role for the period for which notice was not given.

41.3 Employee leaving during redundancy notice period

- (a) An Employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice in accordance with this Agreement.
- (b) The Employee is entitled to receive the benefits and payments they would have received had they remained in employment until the expiry of the notice. However, the Employee is not entitled to be paid for any part of the period of notice remaining after the Employee ceased to be employed.

41.4 Job search entitlement - redundancy

- (a) Where an Employer has given notice of termination to an Employee in circumstances of redundancy, the Employee must be allowed time off without loss of pay of up to one day each week of the period of notice for the purpose of seeking other employment.
- (b) If an Employee is allowed time off without loss of pay of more than one day under this clause, the Employee must, at the request of the Employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of this clause.
- (d) An Employee who fails to produce proof when required under this clause is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 40.3.

PART 8 - MISCELLANEOUS

42. ATA PATHWAY INCENTIVES

- 42.1 Where required by the Employer, opportunity will be provided to existing PTO Employees to undertake the ATA training pathway. In this case, Employees will be offered a subsidised place on an Employer-run Diploma of Emergency Health Care at 20% of the retail course cost.
- 42.2 Where the Employer seeks to fill a vacant ATA position, preference will be given to the Employer's existing PTO Employees who are qualified to work as an ATA, over external applicants, subject to the Employees having satisfactory records of performance and conduct.
- 42.3 Where the Employer has subsidised the cost of an Employee completing the ATA course, the Employee will be required to reimburse the Employer if they resign their employment within 12 months of completing the ATA pathway successfully and commencing as an ATA. The total amount owed will reflect a contribution towards the Diploma subsidy and cost of supervision hours and administration. This will reduce on a pro rata basis monthly after commencing as an ATA.
- 42.4 At the time that an Employee is offered a position in the ATA training course, the effect of this clause will be explained and the dollar amounts for the repayment schedule will be given to the Employee in writing.
- 42.5 An Employee whose employment is terminated at the Employer's initiative for any reason will not be required to reimburse the Employer any amount in relation to the ATA training course.

43. UNION DELEGATE LEAVE

- 43.1 The Employer will provide a total of 4 days per calendar year for the totality of all applications of paid trade union, union delegate training leave, attendance at association conferences, meetings and courses provided that:
- (a) the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute settlement procedure/s;
 - (b) that two weeks' notice is provided to the Employer;
 - (c) the approval of leave must have regard to the operational requirements of the Employer;
 - (d) this leave shall be paid at the ordinary time rate of pay.
- 43.2 Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

44. SKILLS MAINTENANCE TRAINING

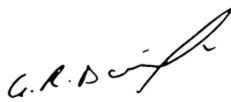
- 44.1 The Employer will provide annual training in accordance with the *Non-Emergency Patient Transport Regulations 2016* (Vic), in the following areas:
- (a) basic life support;
 - (b) occupational health and safety, with particular attention to manual handling and infection control;
 - (c) clinical practice protocols;
 - (d) cardiac monitoring/defibrillation and other resuscitation skills;

(e) mental health;

(f) any other area of relevant professional development.

44.2 The Employer will provide each Employee with a minimum of two (2) days (10 hours of paid time per training day) training and reaccreditation each year using face to face training delivery methods.

Dated the 17th day of October 2023



.....
Chief Executive Officer (signature)
St John Ambulance Australia (VIC) Inc.



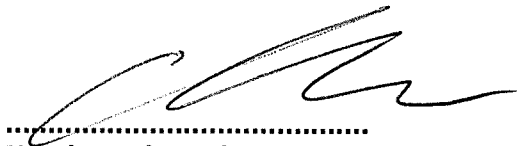
.....
Witness (signature)

Gordon Botwright

.....
St John Ambulance Australia (VIC) Inc.
601 Blackburn Road
Notting Hill, VIC 3168

Peter Ayres

.....
(name and address of witness)



.....
Nominated Employee Representative (signature)

Danny Hill Secretary

.....
**Nominated Employee Representative
name and title**



.....
Witness (Signature)

Joshua Gardner

.....
Witness (name)

Victorian Ambulance Union Incorporated

.....
Organisation Name and Address 559 Queensberry St, North Melbourne

SCHEDULE 1

Classifications

Ambulance Transport Attendant (ATA) is an employee who has completed the Diploma of Emergency Health Care or equivalent and has completed all the required supervised clinical practice. An ATA provides care and transport of non-emergency patients. An ATA is qualified to provide a more advanced level of care and treatment to patients than a Patient Transport Officer.

Patient Transport Officer (PTO) is an employee who has completed a Certificate 3 in Non-emergency Client Transport or equivalent qualification and who provides basic care and transport of non-emergency patients.

Communications Call Taker (CCT) is an employee who answers non-emergency telephone calls in accordance with pre-determined guidelines within a communications centre.

SCHEDULE 2

Rates of Pay and Allowances

Hourly rates of pay and all allowances other than the On-Call Allowance will be increased on 1 July each year, by 3%, or the annual Award rate increase published by the Fair Work Commission, whichever is higher.

Patient Transport Officer

	Effective on EBA certification date			
Patient Transport Officer	Part time & Full Time Employees Per Hour \$	Part Time & Full Time Saturday & Sunday Rate Per Hour \$	Casual Employees Per Hour \$	Casual Employees Per Hour Saturday & Sunday \$
Paypoint				
1	\$28.78	\$43.17	\$35.98	\$50.37
2	\$29.00	\$43.50	\$36.25	\$50.75
3	\$29.18	\$43.77	\$36.48	\$51.07
4	\$29.47	\$44.21	\$36.84	\$51.57
5	\$29.62	\$44.43	\$37.03	\$51.84

Ambulance Transport Attendant

	Effective on EBA certification date			
Ambulance Transport Attendant	Part time & Full Time Employee s Per Hour \$	Part Time & Full Time Saturday & Sunday Rate Per Hour \$	Casual Employee s Per Hour \$	Casual Employee s Per Hour Saturday & Sunday \$
Paypoint				
1	\$32.69	\$49.04	\$40.87	\$57.22
2	\$32.95	\$49.43	\$41.19	\$57.66
3	\$33.14	\$49.71	\$41.42	\$57.99
4	\$33.47	\$50.20	\$41.84	\$58.57
5	\$33.64	\$50.46	\$42.05	\$58.86
6	\$33.80	\$50.71	\$42.26	\$59.16
7	\$33.97	\$50.96	\$42.47	\$59.45

Communications Call Takers

	Effective on EBA certification date			
Communications Call Taker	Part time & Full Time Employees Per Hour \$	Part Time & Full Time Saturday & Sunday Rate Per Hour \$	Casual Employees Per Hour \$	Casual Employees Per Hour Saturday & Sunday \$
Paypoint				
1	\$29.64	\$44.46	\$37.05	\$51.87
2	\$29.86	\$44.79	\$37.32	\$52.25
3	\$30.05	\$45.07	\$37.56	\$52.58
4	\$30.35	\$45.52	\$37.93	\$53.11
5	\$30.50	\$45.75	\$38.12	\$53.37

Allowances

	Effective on EBA certification date
Public holiday	
On call	\$9.00 per hour or part-hour
Control call	\$5.54 per hour or part-hour
Meal allowances— Away from employee’s branch or usual place of work	\$18.36 per shift
Meal allowances—No meal break	\$4.85 per occasion
Meal allowances— Called back to duty—one spoilt meal allowance	\$18.36 per shift
Meal allowances 2+ hours overtime	\$22.98 per occasion
Travelling allowances— motor vehicle	\$0.96 p/km
Relieving allowance—meal expenses— breakfast	\$18.36 per occasion
Relieving allowance—meal expenses—lunch	\$36.75 per occasion
Relieving allowance—meal expenses—dinner	\$55.13 per occasion
Relieving allowance—meal expenses—total	\$110.24 per occasion
Living away from home allowance	\$29.86 per night
Student observer allowance up to 10 hours per shift	\$1 p/h
ATA supervision allowance (PTO Lvl 1 first 100 hours); PTO/ATA career pathway (400 hours) up to a maximum of 10 hours per shift	\$2 p/hr
Clinical Instructor allowance	\$3.50 p/hr

Relieving employee living away from home - accommodation and cleaning of uniform allowance	Reimbursement of approved expenses
Relieving employee living away from home - travelling time allowance	\$0.96 per kilometre
Travelling time allowance - report for duty away from usual workplace	Ordinary base rate of pay

SCHEDULE 3

Part 2-2 Division 5 of the *Fair Work Act 2009* (Cth) (Parental Leave)

Division 5—Parental leave and related entitlements

Subdivision A—General

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

Employees other than casual employees

- (1) An employee, other than a casual employee, is not entitled to leave under this Division (other than unpaid pre-adoption leave or unpaid no safe job leave) unless the employee has, or will have, completed at least 12 months of continuous service with the employer immediately before the date that applies under subsection (3).
- (1A) For the purposes of applying subsection (1) in relation to an employee who has had their employment converted under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that subsection.

Casual employees

- (2) A casual employee, is not entitled to leave (other than unpaid pre-adoption leave or unpaid no safe job leave) under this Division unless:
 - (a) the employee is, or will be, immediately before the date that applies under subsection (3), a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and
 - (b) but for:
 - (i) the birth or expected birth of the child; or
 - (ii) the placement or the expected placement of the child;

the employee would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Date at which employee must have completed 12 months of service

- (3) For the purposes of subsections (1) and (2), the date that applies is:

- (a) if the leave is:
 - (i) birth-related leave starting before the birth of the child; or
 - (ii) unpaid special parental leave;

the expected date of birth of the child; or

- (b) in any other case—the date on which the employee's period of leave

is to start.

Meaning of birth-related leave

- (4) **Birth-related leave** means leave of either of the following kinds:
- (a) unpaid parental leave taken in association with the birth of a child (see section 70);
 - (b) unpaid special parental leave (see section 80).

Meaning of adoption-related leave

- (5) **Adoption-related leave** means leave of either of the following kinds:
- (a) unpaid parental leave taken in association with the placement of a child for adoption (see section 70);
 - (b) unpaid pre-adoption leave (see section 85).

Meaning of day of placement

- (6) The **day of placement**, in relation to the adoption of a child by an employee, means the earlier of the following days:
- (a) the day on which the employee first takes custody of the child for the adoption;
 - (b) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.

68 General rule for adoption-related leave—child must be under 16 etc.

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

- (a) is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child; and
- (b) has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement, or the expected day of placement, of the child; and
- (c) is not (otherwise than because of the adoption) a child of the employee or the employee's spouse or de facto partner.

69 Transfer of employment situations in which employee is entitled to continue on leave etc.

- (1) If:
- (a) there is a transfer of employment in relation to an employee; and

- (b) the employee has already started a period of leave under this Division when the employee's employment with the first employer ends;

the employee is entitled to continue on that leave for the rest of that period.

(2) If:

- (a) there is a transfer of employment in relation to an employee; and
- (b) the employee has, in relation to the first employer, already taken a step that is required or permitted by a provision of this Division in relation to taking a period of leave;

the employee is taken to have taken the step in relation to the second employer.

Note: Steps covered by this subsection include (for example) complying with a notice or evidence requirement of section 74 in relation to the first employer.

Subdivision B—Parental leave

70 Entitlement to unpaid parental leave

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

- (a) the leave is associated with:
 - (i) the birth of a child of the employee or the employee's spouse or de facto partner; or
 - (ii) the placement of a child with the employee for adoption; and
- (b) the employee has or will have a responsibility for the care of the child.

Note: The employee's entitlement under this section may be affected by other provisions of this Division.

71 The period of leave

Application of this section

- (1) This section applies to an employee who intends to take unpaid parental leave.

Leave must be taken in single continuous period

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

Note 1: An employee may take a form of paid leave at the same time as the employee is on unpaid parental leave (see section 79).

Note 2: For provisions affecting the rule in this subsection, see:

- (a) subsection 72A(11) (flexible unpaid parental leave); and
- (b) subsection 73(4) (pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth); and
- (c) paragraph 78A(2)(b) (permitted work periods while child is hospitalised); and
- (d) subsection 79A(1) (keeping in touch days).

When birth-related leave must start and end

- (3) If the leave is birth-related leave for an employee who is pregnant with, or gives birth to, the child, the period of leave may start:

- (a) up to 6 weeks before the expected date of birth of the child; or
- (b) earlier, if the employer and employee so agree; or
- (c) during the 24-month period starting on the date of birth of the child;

but must end during the 24-month period starting on the date of birth of the child.

Note 1: If the employee is not fit for work, the employee may be entitled to:

- (a) paid personal leave under Subdivision A of Division 7; or
- (b) unpaid special parental leave under section 80.

Note 2: If it is inadvisable for the employee to continue in the employee's present position, the employee may be entitled:

- (a) to be transferred to an appropriate safe job under section 81; or
- (b) to paid no safe job leave under section 81A; or
- (c) to unpaid no safe job leave under section 82A.

Note 3: Section 344 prohibits the exertion of undue influence or undue pressure on the employee in relation to a decision by the employee whether to agree as mentioned in paragraph (3)(b) of this section.

- (4) If the leave is birth-related leave but subsection (3) does not apply, the period of leave must start and end during the 24-month period starting on the date of birth of the child.

When adoption-related leave must start and end

- (5) If the leave is adoption-related leave, the period of leave must start and end during the 24-month period starting on the day of placement of the child.

Limit on amount of leave

- (6) The employee may take unpaid parental leave under this section only if the period of leave is no longer than 12 months, less the employee's notional flexible period.

Note: An employee is entitled under section 76 to request an extension of the period of leave beyond the employee's available parental leave period. However, the period of leave may not be extended beyond 24 months after the date of birth or day of placement of the child (see subsection 76(7)).

72A Flexible unpaid parental leave

Taking leave during 24 months starting on date of birth or day of placement

- (1) An employee may take up to 100 days (or, if a higher number of days is prescribed by the regulations, that higher number of days) of unpaid parental leave (***flexible unpaid parental leave***) during the 24-month period starting on the date of birth or day of placement of the child if the requirements of this section are satisfied in relation to the leave.

Note 1: The flexible unpaid parental leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

Note 2: The number of days of flexible unpaid parental leave that the employee takes must not be more than the number of flexible days notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).

- (2) Flexible unpaid parental leave under subsection (1) is available in full to part-time and casual employees.

Taking leave that starts up to 6 weeks before the expected date of birth of the child

- (2A) A pregnant employee may take unpaid parental leave (***flexible unpaid parental leave***) during the period that starts 6 weeks before the expected date of birth of the child if the requirements of this section are satisfied in relation to the leave.

Note 1: The flexible unpaid parental leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

Note 2: The number of days of flexible unpaid parental leave that the employee takes must not be more than the number of flexible days notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).

- (2B) Flexible unpaid parental leave under subsection (2A) is available in full to pregnant part-time employees and pregnant casual employees.

- (2C) The amount of flexible unpaid parental leave to which an employee is entitled under subsection (1) in relation to the child is reduced by the number of days of flexible unpaid parental leave taken by the employee under subsection (2A) in relation to the child.

How flexible unpaid parental leave may be taken

- (3) The employee must take the flexible unpaid parental leave as:
 - (a) a single continuous period of one or more days; or
 - (b) separate periods of one or more days each.

Effect of taking unpaid parental leave under other provisions

- (4) The employee may take the flexible unpaid parental leave whether or not the employee has taken unpaid parental leave under another provision of this Division in relation to the child.
- (5) However, the employee may take flexible unpaid parental leave after taking one or more periods of unpaid parental leave under another provision of this Division only if the total

of those periods (disregarding any extension under section 76A) is no longer than 12 months, less the employee's notional flexible period.

Meaning of notional flexible period

- (6) An employee's *notional flexible period* is the period during which the employee would be on flexible unpaid parental leave if the employee took leave for all the employee's flexible days in a single continuous period. For this purpose, the employee's flexible days are the flexible days notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).
- (7) For the purposes of subsection (6), assume that:
- (a) the employee ordinarily works each day that is not a Saturday or a Sunday; and
 - (b) there are no public holidays during the period.

Multiple births

- (10) An employee is not entitled to take flexible unpaid parental leave in relation to a child if:
- (a) the child and another child:
 - (i) are born during the same multiple birth; or
 - (ii) are both placed with the employee for adoption and have the same day of placement; and
 - (b) the employee takes flexible unpaid parental leave in relation to the other child.

Interaction with section 71

- (11) Flexible unpaid parental leave taken by an employee is an exception to the rules in section 71 about:
- (a) taking the employee's unpaid parental leave in a single continuous period; and
 - (b) when the employee's period of unpaid parental leave must start.
- (12) Despite anything in subsection (11), flexible unpaid parental leave cannot be used to break up a period of unpaid parental leave taken under section 71.

73 Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth

Employer may ask employee to provide a medical certificate

- (1) If a pregnant employee who is entitled to unpaid parental leave (whether or not the employee has complied with section 74) continues to work during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate containing the following statements (as applicable):
- (a) a statement of whether the employee is fit for work;

(b) if the employee is fit for work—a statement of whether it is inadvisable for the employee to continue in the employee’s present position during a stated period because of:

- (i) illness, or risks, arising out of the employee’s pregnancy; or
- (ii) hazards connected with the position.

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

Employer may require employee to take unpaid parental leave

(2) The employer may require the employee to take a period of unpaid parental leave other than flexible unpaid parental leave (the *period of leave*) as soon as practicable if:

(a) the employee does not give the employer the requested certificate within 7 days after the request; or

(b) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is not fit for work; or

(c) the following subparagraphs are satisfied:

(i) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is fit for work, but that it is inadvisable for the employee to continue in the employee’s present position for a stated period for a reason referred to in subparagraph (1)(b)(i) or (ii);

(ii) the employee has not complied with the notice and evidence requirements of section 74 for taking unpaid parental leave.

Note: If the medical certificate contains a statement as referred to in subparagraph (c)(i) and the employee has complied with the notice and evidence requirements of section 74, then the employee is entitled to be transferred to a safe job (see section 81) or to paid no safe job leave (see section 81A).

When the period of leave must end

(3) The period of leave must not end later than the earlier of the following:

(a) the end of the pregnancy;

(b) if the employee has given the employer notice of the taking of a period of leave connected with the birth of the child (whether it is unpaid parental leave or some other kind of leave)—the start date of that leave.

Special rules about the period of leave

(4) The period of leave is an exception to the rules in section 71 about:

(a) taking the employee’s unpaid parental leave in a single continuous period; and

(b) when the employee’s period of unpaid parental leave must start.

Note: The period of leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

- (5) The employee is not required to comply with section 74 in relation to the period of leave.

74 Notice and evidence requirements

General requirement to give notice of taking leave

- (1) An employee must give the employee's employer written notice of the taking of unpaid parental leave under section 71, or flexible unpaid parental leave, or both, by the employee.

Notice requirements

- (2) The employee must give the notice to the employer:
- (a) at least 10 weeks before starting any of the leave covered by the notice; or
 - (b) if that is not practicable, and:
 - (i) the first or only period of leave covered by the notice is leave to be taken under section 71; or
 - (ii) any of the leave covered by the notice starts before the child's date of birth or expected date of birth;as soon as practicable (which may be a time after any of the leave covered by the notice has started).
- (2A) However, if the first or only period of leave covered by the notice is leave to be taken under section 72A, the notice may be given at any later time if the employer agrees.
- (3) If any of the leave covered by the notice is to be taken under section 71, the notice must specify the intended start and end dates of the leave to be taken under section 71.
- (3C) If any of the leave covered by the notice is to be taken under section 72A, the notice must specify the total number of days (*flexible days*) of flexible unpaid parental leave that the employee intends to take in relation to the child.
- (3D) If the employer agrees, the employee may:
- (a) reduce the number of flexible days, including by reducing the number of flexible days to zero; or
 - (b) increase the number of flexible days, but not so as to increase the number of flexible days above 100 (or, if a higher number of days is prescribed by regulations made for the purposes of subsection 72A(1), that higher number).

Taking leave under section 71—confirming or changing intended start and end dates

- (4) If any of the leave covered by the notice is to be taken under section 71, then at least 4 weeks before the intended start date specified in the notice given under subsection (1),

the employee must:

- (a) confirm the intended start and end dates of the leave to be taken under section 71; or
- (b) advise the employer of any changes to the intended start and end dates of the leave to be taken under section 71;

unless it is not practicable to do so.

Taking flexible unpaid parental leave—notifying days on which employee will take leave

(4B) The employee must give the employer written notice of a flexible day on which the employee will take flexible unpaid parental leave:

- (a) at least 4 weeks before that day; or
- (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).

Note: Whether or not it is practicable for the employee to give notice at least 4 weeks before that day will depend on the employee's personal and family circumstances. For example, it may not be practicable for the employee to give notice at least 4 weeks before that day where the employee experiences a health issue, a pregnancy complication or an unexpected change in the employee's childcare arrangements.

(4C) If the employer agrees, the employee may change a day on which the employee takes flexible unpaid parental leave from a day specified in a notice under subsection (4B).

Evidence requirements

(5) An employee who has given the employee's employer notice of the taking of unpaid parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person:

- (a) if the leave is birth-related leave:
 - (i) of the date of birth, or the expected date of birth, of the child; and
 - (ii) that paragraph 77A(1)(a) (which deals with the stillbirth of a child) applies in relation to the employee, if relevant; or
- (b) if the leave is adoption-related leave:
 - (i) of the day of placement, or the expected day of placement, of the child; and
 - (ii) that the child is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child.

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

Example: If the application of paragraph 77A(1)(a) (which deals with the stillbirth of a child) is relevant—certification by a medical practitioner of the child as having been delivered.

Compliance

- (7) An employee is not entitled to take unpaid parental leave under section 71, or flexible unpaid parental leave, unless the employee complies with this section.

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

75 Extending period of unpaid parental leave—extending to use more of available parental leave period

Application of this section

- (1) This section applies if:
- (a) an employee has, in accordance with section 74, given notice of the taking of a period of unpaid parental leave (the *original leave period*) under section 71; and
 - (b) the original leave period is less than the employee’s available parental leave period; and
 - (c) the original leave period has started.
- (2) The employee’s *available parental leave period* is 12 months, less any periods of the following kinds:
- (b) a period of unpaid parental leave that the employee has been required to take under subsection 73(2) or 82(2);
 - (d) if the employee has given notice in accordance with subsection 74(2) or (2A) of the taking of flexible unpaid parental leave—a period equal to the employee’s notional flexible period.

First extension by giving notice to employer

- (3) The employee may extend the period of unpaid parental leave taken under section 71 by giving the employee’s employer written notice of the extension at least 4 weeks before the end date of the original leave period. The notice must specify the new end date for the leave.
- (4) Only one extension is permitted under subsection (3).

Further extensions by agreement with employer

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

No entitlement to extension beyond available parental leave period

- (6) The employee is not entitled under this section to extend the period of unpaid parental leave beyond the employee's available parental leave period.

76 Extending period of unpaid parental leave—extending for up to 12 months beyond available parental leave period

Employee may request further period of leave

- (1) An employee who takes unpaid parental leave under section 71 for the employee's available parental leave period may request the employee's employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period.

Note: Extended periods of unpaid parental leave can include keeping in touch days on which an employee performs work (see section 79A).

Making the request

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

Note: The request must be made when the employee is taking unpaid parental leave under section 71.

No extension beyond 24 months after birth or placement

- (7) Despite any other provision of this Division, the employee is not entitled to extend the period of unpaid parental leave beyond 24 months after the date of birth or day of placement of the child.

76A Responding to requests for extension of unpaid parental leave

Responding to the request

- (1) If, under subsection 76(1), an employee requests an employer to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period, the employer must give the employee a written response to the request within 21 days.

- (2) The response must:

- (a) state that the employer grants the request; or
- (b) if, following discussion between the employer and the employee, the employer and the employee agree to an extension of unpaid parental leave for the employee for a period that differs from the period requested—set out the agreed extended period; or
- (c) subject to subsection (3)—state that the employer refuses the request and include the matters required by subsection (6).

- (3) The employer may refuse the request only if:

- (a) the employer has:
 - (i) discussed the request with the employee; and
 - (ii) genuinely tried to reach an agreement with the employee about an extension of the period of unpaid parental leave for the employee; and
- (b) the employer and the employee have not reached such an agreement; and
- (c) the employer has had regard to the consequences of the refusal for the employee; and
- (d) the refusal is on reasonable business grounds.

Note: An employer's grounds for refusing a request may be taken to be reasonable business grounds, or not to be reasonable business grounds, in certain circumstances (see subsection 76C(6)).

- (4) To avoid doubt, subparagraph (3)(a)(ii) does not require the employer to agree to an extension of the period of unpaid parental leave for the employee if the employer would have reasonable business grounds for refusing a request for the extension.

Reasonable business grounds for refusing requests

- (5) Without limiting what are reasonable business grounds for the purposes of paragraph (3)(d) and subsection (4), reasonable business grounds for refusing a request include the following:
 - (a) that the extension of the period of unpaid parental leave requested by the employee would be too costly for the employer;
 - (b) that there is no capacity to change the working arrangements of other employees to accommodate the extension of the period of unpaid parental leave requested by the employee;
 - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the extension of the period of unpaid parental leave requested by the employee;
 - (d) that the extension of the period of unpaid parental leave requested by the employee would be likely to result in a significant loss in efficiency or productivity;
 - (e) that the extension of the period of unpaid parental leave requested by the employee would be likely to have a significant negative impact on customer service.

Note: The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4). For example, if the employer has only a small number of employees, there may be no capacity to change the working

arrangements of other employees to accommodate the request (see paragraph (5)(b)).

Employer must explain grounds for refusal

- (6) If the employer refuses the request, the written response under subsection (1) must:
- (a) include details of the reasons for the refusal; and
 - (b) without limiting paragraph (a) of this subsection:
 - (i) set out the employer’s particular business grounds for refusing the request; and
 - (ii) explain how those grounds apply to the request; and
 - (c) either:
 - (i) set out the extension of the period of unpaid parental leave for the employee (other than the period requested by the employee) that the employer would be willing to agree to; or
 - (ii) state that there is no extension of the period that the employer would be willing to agree to; and
 - (d) set out the effect of sections 76B and 76C.

Genuinely trying to reach an agreement

- (7) This section does not affect, and is not affected by, the meaning of the expression “genuinely trying to reach an agreement”, or any variant of the expression, as used elsewhere in this Act.

76B Disputes about extension of period of unpaid parental leave

Application of this section

- (1) This section applies to a dispute between an employer and an employee that relates to a request by the employee to the employer under subsection 76(1) to agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months immediately following the end of the available parental leave period if:
- (a) the employer has refused the request; or
 - (a) (b) 21 days have passed since the employee made the request, and the employer has not given the employee a written response to the request under section 76A.

Note 1: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

fNote 2: Subsection 55(4) permits inclusion of terms that are ancillary or incidental to, or that supplement, the National Employment Standards. However, a term of a

modern award or an enterprise agreement has no effect to the extent it contravenes section 55 (see section 56).

Resolving disputes

- (2) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

FWC may deal with disputes

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.

- (4) If a dispute is referred under subsection (3):

(a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and

(b) the FWC may deal with the dispute by arbitration in accordance with section 76C.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate. The FWC commonly deals with disputes by conciliation. The FWC may also deal with the dispute by mediation, making a recommendation or expressing an opinion (see subsection 595(2)).

Representatives

- (5) The employer or employee may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:

(a) resolving the dispute; or

(b) the FWC dealing with the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

76C Arbitration

- (1) For the purposes of paragraph 76B(4)(b), the FWC may deal with the dispute by arbitration by making any of the following orders:

(a) if the employer has not given the employee a written response to the request under section 76A—an order that the employer be taken to have refused the request;

(b) if the employer refused the request:

- (i) an order that it would be appropriate for the grounds on which the employer refused the request to be taken to have been reasonable business grounds; or
- (ii) an order that it would be appropriate for the grounds on which the employer refused the request to be taken not to have been reasonable business grounds;

(c) if the FWC is satisfied that the employer has not responded, or has not responded adequately, to the employee's request under section 76A—an order that the employer take such further steps as the FWC considers appropriate, having regard to the matters in section 76A;

(d) subject to subsection (4) of this section:

- (i) an order that the employer grant the request; or
- (ii) an order that the employer agree to an extension of unpaid parental leave for the employee for a further period of up to 12 months (other than the period requested by the employee) immediately following the end of the available parental leave period.

Note: An order by the FWC under paragraph (c) could, for example, require the employer to give a response, or further response, to the employee's request, and could set out matters that must be included in the response or further response.

(2) In making an order under subsection (1), the FWC must take into account fairness between the employer and the employee.

(3) The FWC must not make an order under paragraph (1)(c) or (d) that would be inconsistent with:

(a) a provision of this Act; or

(b) a term of a fair work instrument (other than an order made under that paragraph) that, immediately before the order is made, applies to the employer and employee.

(4) The FWC may make an order under paragraph (1)(d) only if the FWC is satisfied that there is no reasonable prospect of the dispute being resolved without the making of such an order.

(5) If the FWC makes an order under paragraph (1)(a), the employer is taken to have refused the request.

(6) If the FWC makes an order under paragraph (1)(b), the grounds on which the employer refuses the request are taken:

(a) for an order made under subparagraph (1)(b)(i)—to be reasonable business grounds; or

(b) for an order made under subparagraph (1)(b)(ii)—not to be reasonable business grounds.

Contravening an order under subsection (1)

(7) A person must not contravene a term of an order made under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

77 Reducing period of unpaid parental leave

If the employer agrees, an employee whose period of unpaid parental leave has started may reduce the period of unpaid parental leave the employee takes.

77A Effect of stillbirth or death of child on unpaid parental leave

Stillbirth—preserving entitlement to birth-related leave

- (1) If:
- (a) a child is stillborn; and
 - (b) an employee would have been entitled to unpaid parental leave that is birth-related leave, if the child had been born alive;

then the employee is taken to be entitled to the unpaid parental leave, despite the stillbirth of the child.

- (2) A *stillborn* child is a child:
- (a) who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and
 - (b) who has not breathed since delivery; and
 - (c) whose heart has not beaten since delivery.
- (3) The provisions of this Division have effect in relation to the employee as if the birth of a child included the stillbirth of a child.

Note: One effect of this subsection is that if the employee has not given notice in accordance with section 74 before the stillbirth of the child, the employee can do so as soon as practicable (which may be a time after the leave has started).

Stillbirth or death of child—cancelling leave or returning to work

- (4) If a child is stillborn, or dies during the 24-month period starting on the child's date of birth, then an employee who is entitled to a period of unpaid parental leave in relation to the child may:
- (a) before the period of leave starts, give the employee's employer written notice cancelling the leave; or
 - (b) if the period of leave has started, give the employee's employer written notice that the employee wishes to return to work on a specified day.
- (5) For the purposes of paragraph (4)(b), the specified day must be at least 4 weeks after the employer receives the notice.
- (6) If the employee takes action under subsection (4), the employee's entitlement to unpaid parental leave in relation to the child ends:
- (a) if the action is taken under paragraph (4)(a)—immediately after the cancellation of the leave; or

- (b) if the action is taken under paragraph (4)(b)—immediately before the specified day.

Interaction with section 77

- (7) Subsections (4) to (6) do not limit section 77 (which deals with the employee reducing the period of unpaid parental leave with the agreement of the employer).

78 Employee who ceases to have responsibility for care of child

- (1) This section applies to an employee who has taken unpaid parental leave in relation to a child if the employee ceases to have any responsibility for the care of the child for a reason other than because the child:
 - (a) is stillborn; or
 - (b) dies during the 24-month period starting on the child's date of birth.
- (2) The employer may give the employee written notice requiring the employee to return to work on a specified day.
- (3) The specified day:
 - (a) must be at least 4 weeks after the notice is given to the employee; and
 - (b) if the leave is birth-related leave taken by an employee who has given birth—must not be earlier than 6 weeks after the date of birth of the child.
- (4) The employee's entitlement to unpaid parental leave in relation to the child ends immediately before the specified day.

78A Hospitalised children

Agreeing to not take unpaid parental leave for a period while child remains in hospital

- (1) If:
 - (a) a child is required to remain in hospital after the child's birth, or is hospitalised immediately after the child's birth, including because:
 - (i) the child was born prematurely; or
 - (ii) the child developed a complication or contracted an illness during the child's period of gestation or at birth; or
 - (iii) the child developed a complication or contracted an illness following the child's birth; and
 - (b) an employee, whether before or after the birth of the child, gives notice in accordance with section 74 of the taking of a period of unpaid parental leave (the ***original leave period***) in relation to the child;

then the employee may agree with the employee's employer that the employee will not take unpaid parental leave for a period (the ***permitted work period***) while the child remains in hospital.

Note: Section 344 prohibits the exertion of undue influence or undue pressure on the employee in relation to a decision by the employee whether to agree.

- (2) If the employee and employer so agree, then the following rules have effect:
- (a) the employee is taken to not be taking unpaid parental leave during the permitted work period;
 - (b) the permitted work period does not break the continuity of the original leave period;
 - (c) the employee is taken to have advised the employer, for the purposes of subsection 74(4), of an end date for the original leave period that is the date on which that period would end if it were extended by a period equal to the permitted work period.

Note: One effect of paragraph (b) is that, if the employee takes periods of unpaid parental leave either side of the permitted work period, the periods are still treated as a single continuous period for the purposes of section 71.

When permitted work period must start

- (3) The permitted work period must start after the birth of the child.

When permitted work period ends

- (4) The permitted work period ends at the earliest of the following:
- (a) the time agreed by the employee and employer;
 - (b) the end of the day of the child's first discharge from hospital after birth;
 - (c) if the child dies before being discharged—the end of the day the child dies.

Only one permitted work period allowed

- (5) Only one period may be agreed to under subsection (1) for which the employee will not take unpaid parental leave in relation to the child.

Evidence

- (6) The employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person of either or both of the following:
- (a) that paragraph (1)(a) applies in relation to the child;
 - (b) that the employee is fit for work.
- (7) Without limiting subsection (6), an employer may require the evidence referred to in that subsection to be a medical certificate.

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

79 Interaction with paid leave

- (1) This Subdivision (except for subsections (2) and (3)) does not prevent an employee from taking any other kind of paid leave while the employee is taking unpaid parental leave. If the employee does so, the taking of that other paid leave does not break the continuity of the period of unpaid parental leave.

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

- (2) While an employee is taking unpaid parental leave, the employee is not entitled to take:
- (a) paid personal/carer's leave; or
 - (b) compassionate leave, unless the permissible occasion is the stillbirth or death of the child in relation to whom the employee is taking unpaid parental leave.
- (3) An employee is not entitled to any payment under Division 8 (which deals with community service leave) in relation to activities the employee engages in while taking unpaid parental leave.

79A Keeping in touch days

- (1) This Subdivision does not prevent an employee from performing work for the employee's employer on a keeping in touch day while the employee is taking unpaid parental leave. If the employee does so, the performance of that work does not break the continuity of the period of unpaid parental leave.
- (2) A day on which the employee performs work for the employer during the period of leave is a ***keeping in touch day*** if:
- (a) the purpose of performing the work is to enable the employee to keep in touch with the employee's employment in order to facilitate a return to that employment after the end of the period of leave; and
 - (b) both the employee and the employer consent to the employee performing work for the employer on that day; and
 - (c) the day is not within:
 - (i) if the employee suggested or requested that the employee perform work for the employer on that day—14 days after the date of birth, or day of placement, of the child to which the period of leave relates; or
 - (ii) otherwise—42 days after the date of birth, or day of placement, of the child; and
 - (d) the employee has not already performed work for the employer or another entity on 10 days during the period of leave that were keeping in touch days.

The duration of the work the employee performs on that day is not relevant for the purposes of this subsection.

Note: The employer will be obliged, under the relevant contract of employment or industrial instrument, to pay the employee for performing work on a keeping in touch day.

- (3) The employee's decision whether to give the consent mentioned in paragraph (2)(b) is taken, for the purposes of section 344 (which deals with undue influence or pressure), to be a decision to make, or not make, an arrangement under the National Employment Standards.
- (4) For the purposes of paragraph (2)(d), treat as 2 separate periods of unpaid parental leave:
 - (a) a period of unpaid parental leave taken during the employee's available parental leave period; and
 - (b) a period of unpaid parental leave taken as an extension of the leave referred to in paragraph (a) for a further period immediately following the end of the available parental leave period.
- (5) Subsection (1) does not apply in relation to the employee on and after the first day on which the employee takes flexible unpaid parental leave in relation to the child.

79B Unpaid parental leave not extended by paid leave or keeping in touch days

If, during a period of unpaid parental leave, an employee:

- (a) takes paid leave; or
- (b) performs work for the employee's employer on a keeping in touch day;

taking that leave or performing that work does not have the effect of extending the period of unpaid parental leave.

Subdivision C—Other entitlements

80 Unpaid special parental leave

Entitlement to unpaid special parental leave

- (1) An employee is entitled to a period of unpaid special parental leave if the employee is not fit for work during that period because:
 - (a) the employee is pregnant and has a pregnancy-related illness; or
 - (b) all of the following apply:
 - (i) the employee has been pregnant;
 - (ii) the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living child;
 - (iii) the child is not stillborn.

Note 1: Entitlement is also affected by section 67 (which deals with the length of the employee's service).

Note 1A: If the child is stillborn, the employee may be entitled to unpaid parental leave (see section 77A).

Note 2: If an employee has an entitlement to paid personal/carer's leave (see section 96), the employee may take that leave instead of taking unpaid special parental leave under this section.

Notice and evidence

- (2) An employee must give the employee's employer notice of the taking of unpaid special parental leave by the employee.
- (3) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (4) An employee who has given the employee's employer notice of the taking of unpaid special parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in subsection (1).
- (5) Without limiting subsection (4), an employer may require the evidence referred to in that subsection to be a medical certificate.
- (6) An employee is not entitled to take unpaid special parental leave unless the employee complies with subsections (2) to (4).
- (7) Subdivision B does not apply to unpaid special parental leave.

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

81 Transfer to a safe job

- (1) This section applies to a pregnant employee if the employee gives the employee's employer evidence that would satisfy a reasonable person that the employee is fit for work, but that it is inadvisable for the employee to continue in the employee's present position during a stated period (the *risk period*) because of:
 - (a) illness, or risks, arising out of the employee's pregnancy; or
 - (b) hazards connected with that position.

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

- (2) If there is an appropriate safe job available, then the employer must transfer the employee to that job for the risk period, with no other change to the employee's terms and conditions of employment.

Note: If there is no appropriate safe job available, then the employee may be entitled to paid no safe job leave under section 81A or unpaid no safe job leave under 82A.

- (3) An **appropriate safe job** is a safe job that has:

- (a) the same ordinary hours of work as the employee's present position;
or
- (b) a different number of ordinary hours agreed to by the employee.

- (4) If the employee is transferred to an appropriate safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position the employee was in before the transfer) for the hours that the employee works in the risk period.

- (5) If the employee's pregnancy ends before the end of the risk period, the **risk period** ends when the pregnancy ends.

- (6) Without limiting subsection (1), an employer may require the evidence to be a medical certificate.

81A Paid no safe job leave

- (1) If:

- (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
- (b) the employee is entitled to unpaid parental leave; and
- (c) the employee has complied with the notice and evidence requirements of section 74 for taking unpaid parental leave;

then the employee is entitled to paid no safe job leave for the risk period.

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

82 Employee on paid no safe job leave may be asked to provide a further medical certificate

Employer may ask employee to provide a medical certificate

- (1) If an employee is on paid no safe job leave during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate stating whether the employee is fit for work.

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

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the *period of leave*) as soon as practicable if:
- (a) the employee does not give the employer the requested certificate within 7 days after the request; or
 - (b) within 7 days after the request, the employee gives the employer a certificate stating that the employee is not fit for work.

Entitlement to paid no safe job leave ends

- (3) When the period of leave starts, the employee's entitlement to paid no safe job leave ends.

When the period of leave must end etc.

- (4) Subsections 73(3), (4) and (5) apply to the period of leave.

82A Unpaid no safe job leave

- (1) If:
- (a) section 81 applies to a pregnant employee but there is no appropriate safe job available; and
 - (b) the employee is not entitled to unpaid parental leave; and
 - (c) if required by the employer—the employee has given the employer evidence that would satisfy a reasonable person of the pregnancy;

then the employee is entitled to unpaid no safe job leave for the risk period.

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

83 Consultation with employee on unpaid parental leave

If:

- (a) an employee is taking a period of unpaid parental leave, other than flexible unpaid parental leave; and
- (b) the employee's employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position;

the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.

84 Return to work guarantee

On ending a period of unpaid parental leave, an employee is entitled to return to:

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

84A Replacement employees

- (1) Before an employer engages an employee to perform the work of another employee who is going to take, or is taking, unpaid parental leave, the employer must notify the replacement employee:
 - (a) that the engagement to perform that work is temporary; and
 - (b) of the rights the employee taking unpaid parental leave has under:
 - (i) subsections 77A(4) and (5) (which provide a right to cancel the leave or end the leave early if the child is stillborn or dies within 24 months); and
 - (ii) section 84 (which deals with the return to work guarantee); and
 - (d) of the effect of section 78 (which provides the employer with a right to require the employee taking unpaid parental leave to return to work if the employee ceases to have any responsibility for the care of the child).
- (2) Subsection (1) does not apply in relation to the taking of flexible unpaid parental leave.

85 Unpaid pre-adoption leave

Entitlement to unpaid pre-adoption leave

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

Note: Entitlement is also affected by section 68 (which deals with the age etc. of the adopted child).
- (2) However, an employee is not entitled to take a period of unpaid pre-adoption leave if:
 - (a) the employee could instead take some other form of leave; and
 - (b) the employer directs the employee to take that other form of leave.
- (3) An employee who is entitled to a period of unpaid pre-adoption leave is entitled to take the leave as:
 - (a) a single continuous period of up to 2 days; or
 - (b) any separate periods to which the employee and the employer agree.

Notice and evidence

- (4) An employee must give the employee's employer notice of the taking of unpaid pre-adoption leave by the employee.
- (5) The notice:
 - (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (6) An employee who has given the employee's employer notice of the taking of unpaid pre-adoption leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as referred to in subsection (1).
- (7) An employee is not entitled to take unpaid pre-adoption leave unless the employee complies with subsections (4) to (6).

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