

## 9. PARENTAL LEAVE

### Interpretation

9.1 For the purposes of this by-law:

- (a) “continuous service” in relation to a period of service by an employee, means a period of service with an employer during the whole of the period, including any period of authorised paid leave, or any period of authorised unpaid leave that is expressly stated as counting as service by a term or condition of employment, or by a law of the Commonwealth, or the Northern Territory.
- (b) “day of placement” in relation to the adoption of a child means the earlier of the following days:
  - (i) the day on which the employee first takes custody of the child for the adoption;
  - (ii) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption.
- (c) “de facto spouse” means a person who lives with the employee as husband, wife or same sex partner on a genuine domestic basis, although not legally married to the employee.
- (d) “eligible casual employee” means a casual employee engaged by an agency on a regular and systematic basis for a sequence of periods of employment during a period of:
  - (i) at least 12 months; or
  - (ii) less than 12 months, provided that the employee has undertaken a previous engagement with the agency, and
    - A. the employer terminated the previous engagement;
    - B. there was not more than three (3) months break between the two engagements; and
    - C. the length of the two (2) engagements is at least 12 months.
- (e) “employee couple” means a couple who are accessing the benefits of by-law 9.97 both of whom are Northern Territory Public Sector employees and have completed a minimum of 12 months continuous service.

- (f) “medical certificate” means a certificate signed by a medical practitioner.
- (g) “medical practitioner” means a person registered, or licensed, as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.
- (h) “parental leave” means any of the types of leave stated in by-law 9.2.
- (i) “primary care-giver” means an employee who has primary responsibility for the care of a child.
- (j) “spouse” includes a de facto spouse, former spouse or former de facto spouse.

9.2 Types of parental leave

- (a) Subject to an employee satisfying any specified qualifying requirements, the types of parental leave available under this by-law are summarised in the following table:

By-law	Type of leave	Paid leave	Unpaid leave	Total paid and unpaid leave
9.3(a)(i)	Ordinary maternity – (primary care-giver) up to 52 weeks – unpaid (less than 12 months continuous service, or eligible casual)	-	52 weeks	52 weeks (1 year)
9.3(a)(ii) 9.10	Ordinary maternity – (primary care-giver) up to 36 months (at least 1 and less than 5 years continuous service)	14 weeks (or 28 weeks at half pay)	142 weeks	156 weeks (3 years)
9.3(a)(iii) 9.10	Ordinary maternity – (primary care-giver) up to 36 months - (at least 5 years continuous	18 weeks (or 36 weeks at half pay)	138 weeks	156 weeks (3 years)

	service)			
9.6(a)(i)/ 9.6(b)/ 9.6(d)	Special maternity - pregnancy related illness – unfit for work – unpaid (No minimum service requirement, includes eligible casual)	-	As stated in medical certificate up to maximum 52 weeks	As stated in medical certificate up to maximum 52 weeks
9.6(a)(ii)/ 9.6(b)/ 9.6(e)(i)/ 9.6(e)(ii)	Special maternity - end of pregnancy – unfit for work –unpaid (No minimum service requirement, includes eligible casual)	-	As stated in medical certificate, up to maximum 52 weeks	As stated in medical certificate, up to maximum 52 weeks
9.6(a)(ii)/ 9.6(b)/ 9.6(e)(iii) 9.10	Special maternity – end of pregnancy - (at least 1 and less than 5 years continuous service)	As stated in medical certificate, up to maximum 14 weeks (or 28 weeks at half pay)	As stated in medical certificate, up to maximum 38 weeks	As stated in medical certificate, up to maximum 52 weeks
9.6(a)(ii)/ 9.6(b)/ 9.6(e)(iv) 9.10	Special maternity – end of pregnancy - (at least 5 years continuous service)	As stated in medical certificate, up to maximum 18 weeks (or 36 weeks at half pay)	As stated in medical certificate, up to maximum 34 weeks	As stated in medical certificate, up to maximum 52 weeks
9.7(a)(i)	Paternity/partner leave taken at time of birth – up to 8 weeks – unpaid (less than 12 months continuous service, or eligible casual)	-	8 weeks	8 weeks
9.7(a)(ii) 9.10	Paternity/partner leave taken at time of birth – up to 8 weeks (at least 1 and less than 5 years continuous service)	1 week (or 2 weeks at half pay)	7 weeks	8 weeks
9.7(a)(iii) 9.10	Paternity/partner leave taken at time of birth – up to 8 weeks (at least 5 years continuous service)	2 weeks (or 4 weeks at half pay)	6 week	8 weeks
9.7(b)(i)	Paternity/partner (primary care-giver) – up	-	52 weeks	52 weeks

	to 52 weeks – unpaid (less than 12 months continuous service, or eligible casual)			(1 year)
9.7(b)(ii)	Paternity/partner (primary care-giver) – up to 36 months– unpaid (at least 12 months continuous service)	-	156 weeks	156 weeks (3 years)
9.8(a)	Pre-adoption to attend interviews prior to adoption (no minimum service requirements, includes eligible casual and casual employees)	-	2 days	2 days
9.8(b)(i)	Adoption (primary care-giver upon initial placement of child) – up to 52 weeks – unpaid (less than 12 months continuous service, or eligible casual)	-	52 weeks	52 weeks
9.8(b)(ii) 9.10	Adoption (primary care-giver upon initial placement of child) – up to 36 months (at least 1 and less than 5 years continuous service)	14 weeks (or 28 weeks at half pay)	142 weeks	156 weeks (3 years)
9.8(b)(iii) 9.10	Adoption (primary care-giver upon initial placement of child) – up to 36 months (at least 5 years continuous service)	18 weeks (or 36 weeks at half pay)	138 weeks	156 weeks (3 years)
9.8(c)(i)	Adoption (partner) – up to 8 weeks taken at time of initial placement– (less than 12 months continuous service, or eligible casual)	-	8 weeks	8 weeks
9.8(c)(ii) 9.10	Adoption (partner) – up to 8 weeks taken at time of initial placement – (at least 1 year and less than 5 years continuous service)	1 week (or 2 weeks at half pay)	7 weeks	8 weeks
9.8(c)(iii) 9.10	Adoption (partner) – up to 8 weeks taken at time of initial placement – (at least 5 years continuous	2 weeks (or 4 weeks at half pay)	6 week	8 weeks

	service)			
9.8(d)(i)	Adoption (partner)(primary care-giver) – up to 52 weeks– (less than 12 months continuous service, or eligible casual)	-	52 weeks	52 weeks
9.8(d)(ii)	Adoption (partner)(primary care-giver) – up to 36 months (at least 12 months service)	-	156 weeks	156 weeks (3 years)

(b) Except where otherwise stated in this by-law:

(i) parental leave is to be available to only one (1) parent at a time (except whilst on concurrent leave), in a single unbroken period;

(ii) where an employee and his or her spouse alternate as the primary care-giver:

A. the stated maximum period of parental leave available to the employee will be reduced by any period of parental leave taken by the employee's spouse, so that the combined total of parental leave taken by the employee and his or her spouse does not exceed the stated maximum period;

B. the first interchange may be made at any time and subsequent interchanges will be for a period of at least 12 months, unless otherwise approved by the CEO; and

C. only one (1) employee is entitled to access paid parental leave under this by-law.

(c) Weekends, public holidays, programmed days off and rostered days off are part of maternity leave and do not extend the period of leave.

(d) With the exception of eligible casual employees, as set out in by-law 9.2(e), and by-law 9.3(m) and 9.6(a), this by-law does not apply to employees engaged on a casual basis.

(e) Eligible casual employees, as defined in by-law 9.1(d), are only entitled to access:

- (i) the unpaid parental leave entitlements set out in by-laws 9.3(a)(i), 9.4(a), 9.4(i)e(i) , 9.4(ii)e(ii), 9.5(a)(i), 9.5(a)(iv)(iii), 9.6(i)a, 9.6(b)(i), 9.6(c)(i) and 9.6(c)(iv); and
- (ii) The paid no safe job leave entitlements in by-law 9.3(j)

## Maternity leave

### 9.3 Ordinary maternity leave

- (a) Subject to the requirements of this by-law, a pregnant employee may access any one of the following ordinary maternity leave entitlements:
  - (i) up to 52 weeks unpaid leave, where the employee has less than 12 months continuous service, or an eligible casual employee, at the time of commencing leave;
  - (ii) up to three (3) years leave, with the first 14 weeks to be paid, provided the employee has completed at least one (1) and less than five (5) years continuous service at the time of commencing leave; or
  - (iii) up to three (3) years leave, with the first 18 weeks to be paid, provided the employee has completed five (5) or more years continuous service at the time of commencing leave.
- (b) Where an employee's qualifying period of 12 months continuous service referred to in by-law 9.3(a)(ii) ends within 14 weeks of the date on which the employee commenced ordinary maternity leave, paid leave will only apply for that part of the 14 week period commencing after the end of the qualifying period.
- (c) Where an employee's qualifying period of five (5) years continuous service referred to in by-law 9.3(a)(iii) ends within 18 weeks of the date on which the employee commenced ordinary maternity leave, the first 14 weeks will be paid and any additional paid leave (up to four (4) weeks) will only apply for that part of the 18 week period commencing after the end of the qualifying period.
- (d) To be entitled to ordinary maternity leave, an employee must give the CEO the following notice and evidence:
  - (i) not less than 10 weeks before the expected date of the birth, a medical certificate stating the expected date of birth;
  - (ii) not less than four (4) weeks before the intended date of commencement of leave, written notice of the date on

which the employee intends to commence leave and the period of leave to be taken, along with a statutory declaration stating that the employee intends to be the child's primary care-giver at all times whilst on leave; and

- (iii) as soon as is practicable, a copy of the child's birth certificate.
- (e) The employee will not be in breach of by-law 9.3(d) if the failure to give the required notification and evidence is because of the birth occurring earlier than expected or any other compelling circumstance.
- (f) An employee may commence ordinary maternity leave at any time within six (6) weeks immediately prior to the expected date of birth.
- (g) Where an employee continues to work within the six (6) week period immediately prior to the expected date of birth, the employee must provide a medical certificate stating that she is fit to work on her normal duties.
- (h) The CEO may require the employee to start ordinary maternity leave if the employee:
  - (i) does not give the CEO the requested certificate within seven (7) days after the request; or
  - (ii) within seven (7) days after the request for the certificate, gives the CEO a medical certificate stating that the employee is unfit to work.
- (i) Where an employee's child dies during a period of ordinary maternity leave, the employee may continue on leave for a maximum period of 52 weeks from the date of commencement of leave, unless the employee elects to resume duty, in which case the provisions of by-law 9.13 apply.
- (j) Subject to notice and evidence requirements set out in by-law 9.3(d), where an employee becomes pregnant whilst on a period of ordinary maternity leave, the employee can elect to commence another period of leave up to the maximum entitlement, in accordance with by-laws 9.3(a)(i), 9.3(a)(ii) or 9.3(a)(iii) from the date of the birth of the child resulting from the subsequent pregnancy.

#### 9.4 Transfer to a safe job

- (a) Where a pregnant employee eligible for ordinary maternity leave under by-law 9.3, who has already complied with the requirements of by-law 9.3(d), provides the CEO with a medical certificate from a medical practitioner stating that the employee is fit to work, but illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it an inadvisable period (the risk period), the CEO, if reasonably practicable, may transfer the employee to an appropriate safe job with no other change to the employee's terms and conditions of employment for the hours that she works during the risk period.
- (b) If the employee's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.
- (c) Casual employees (other than eligible casual employees)

A casual employee who is pregnant is entitled to be transferred to a safe job as follows:

- (i) A casual employee who has given her CEO a medical certificate from a medical practitioner stating that she is fit for work, but illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work during a stated period (the risk period), the CEO must, if reasonably practicable, transfer the employee to an appropriate safe job with no other change to the employee's terms and conditions of employment for the hours that she works during the risk period. If the employee's pregnancy ends before the end of the risk period, the risk period ends when the pregnancy ends.
- (ii) If there is no safe job available and the employee has complied with the evidence requirements of by-law 9.4(c)(i), the employee is entitled to unpaid no safe job leave for the risk period.

## 9.5 No safe job leave

- (a) If it is not reasonably practicable to transfer the employee to an appropriate safe job, the employee may take paid no safe job leave for the risk period until the earliest of either:
  - (i) the end of the period stated in the medical certificate;
  - (ii) the day before the employee commences ordinary maternity leave; or
  - (iii) the day before the end of the pregnancy.



- (b) The employee is entitled to her base rate of pay for her ordinary hours of work in the risk period.

## 9.6 Special maternity leave

- (a) In addition to any paid personal leave entitlements available to an employee, subject to the requirements of this by-law, a pregnant employee, or eligible casual employee, who has not yet commenced ordinary maternity leave is entitled to take special maternity leave where:
  - (i) she has a pregnancy related illness; or
  - (ii) she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.
- (b) The period of special maternity leave that an employee is entitled to take is such period as a medical practitioner certifies as necessary, provided that the maximum period of special maternity leave is 52 weeks.
- (c) The period of special maternity leave must end before the employee starts any period of ordinary maternity leave.
- (d) Special maternity leave taken by an employee under by-law 9.6(a)(i):
  - (i) will be unpaid;
  - (ii) must end before the employee starts any period of ordinary maternity leave; and
  - (iii) will be deducted from the maximum period of ordinary maternity leave that the employee is entitled to take.
- (e) Special maternity leave taken by an employee under by-law 9.6(a)(ii) will be:
  - (i) unpaid if the pregnancy ended more than 20 weeks before the expected date of the birth;
  - (ii) unpaid if the pregnancy ended within 20 weeks of the expected date of the birth and the employee has not completed 12 months continuous service, or eligible casual employee, at the time of commencing leave; or
  - (iii) paid up to a maximum of 14 weeks if the pregnancy ended within 20 weeks of the expected date of the birth,

provided the employee has completed 12 months continuous service at the time of commencing leave.

- (iv) paid up to a maximum of 18 weeks if the pregnancy ended within 20 weeks of the expected date of the birth, provided the employee has completed five (5) years continuous service at the time of commencing leave.
- (f) Where an employee's qualifying period of 12 months continuous service referred to in by-law 9.6(e)(iii) ends within 14 weeks of the date on which the employee commenced leave, paid leave will only apply for that part of the 14 week period commencing after the end of the qualifying period.
- (g) Where an employee's qualifying period of five (5) years continuous service referred to in by-law 9.6(e)(iv) ends within 18 weeks of the date on which the employee commenced leave, the first 14 weeks will be paid and any additional paid leave (up to four (4) weeks) will only apply for that part of the 18 week period commencing after the end of the qualifying period.
- (h) To be entitled to special maternity leave an employee must as soon as is reasonably practicable, give the CEO a written application stating the date on which the employee proposes to commence the leave and the period of leave to be taken; and
  - (i) in the case of special maternity leave taken under by-law 9.6(a)(i) a medical certificate from a medical practitioner stating that the employee is unfit to work for a stated period because of a pregnancy related illness; and
  - (ii) in the case of special maternity leave taken under by-law 9.6(a)(ii), a medical certificate from a medical practitioner stating that:
    - A. the employee's pregnancy has ended within 28 weeks of the expected date of birth of a living child; and
    - B. the employee will be unfit for work for a stated period.

## 9.7 Paternity/partner leave

Subject to the requirements of this by-law, an employee may access the following paternity/partner leave entitlements:

- (a) Paternity/partner leave (includes concurrent leave) – birth of child – leave taken with employee's spouse

- (i) in the case of an employee who has not completed 12 months continuous service, or an eligible casual employee, at the time of commencing his or her leave, up to eight (8) weeks of unpaid paternity/partner leave to be taken within the week starting on the day that the employee's spouse begins to give birth, with such leave able to be taken at the same time that the employee's spouse is taking paid or unpaid maternity leave;
- (ii) in the case of an employee who has completed at least one (1) year and less than five (5) years continuous service at the time of commencing leave, up to eight (8) weeks leave, including one (1) week of paid, to be taken within the week starting on the day that the employee's spouse begins to give birth, with such leave able to be taken at the same time that the employee's spouse is taking paid or unpaid maternity leave;
- (iii) in the case of an employee who has completed five (5) or more years continuous service at the time of commencing his or her leave, up to eight (8) weeks leave, including two (2) weeks of paid leave to be taken within the week starting on the day that the employee's spouse begins to give birth, with such leave able to be taken at the same time that the employee's spouse is taking paid or unpaid maternity leave;
- (iv) in the case of paternity/partner leave under by-laws 9.7(a)(i) to (iii):
  - A. leave is to be taken in the first 12 months from date of birth of the child.
  - B. unless the CEO agrees otherwise, leave must start within the week starting on the day that the employee's spouse begins to give birth.
  - C. leave may be taken in separate periods, but unless the CEO agrees, each period must not be shorter than two (2) weeks.
  - D. the employee must give notice to the CEO at least:
    - 1) 10 weeks before starting the leave, unless paragraph 2) below applies.
    - 2) if the leave is to be taken in separate periods, and the leave is not the first of

those periods of leave, four (4) weeks before starting the period of leave; or

- 3) if that is not practicable – as soon as practicable, which may be a time after the leave has started.

E. concurrent leave is an exception to the requirement for parental leave to be available to only one parent at a time in a single unbroken period.

(b) Paternity/partner leave – employee is primary care-giver for the duration of the leave

(i) up to 52 weeks unpaid paternity/partner leave where the employee has less than 12 months continuous service, or eligible casual employee, at the time of commencing leave, and provided that such leave must end within 24 months of the date of the birth of the child;

(ii) up to three (3) years unpaid paternity/partner leave, provided that such leave must end within 36 months of the date of the birth of the child and the employee has completed 12 months of continuous service at the time of commencing leave;

(iii) To be entitled to paternity/partner leave under by-law 9.7(b)(i) or 9.7(b)(ii), an employee must give the CEO the following notice and evidence:

A. not less than 10 weeks before the intended date of commencement of leave written notice of the dates on which he or she proposes to start and finish the period of paternity/partner leave;

B. a statutory declaration stating the employee intends to be the child's primary care-giver at all times while on paternity/partner leave; and

C. as soon as reasonably practicable, a copy of the child's birth certificate.

(iv) the employee will not be in breach of by-law 9.5(b)(iii) if the failure to give the required period of notice is because of the birth occurring earlier than expected or any other compelling circumstance.

(c) Where an employee's child dies during a period of paternity/partner leave under by-law 9.5(b)(i) or 9.7(b)(ii) the

employee may continue on leave for maximum period of 52 weeks from the date of commencement of leave, unless the employee elects to resume duty, in which case the provisions of by-law 9.15 apply.

## 9.8 Adoption leave

Subject to the requirements of this by-law, an employee may access the following adoption leave entitlements:

- (a) Pre-adoption leave – to attend interviews or examinations required to obtain the adoption approval
  - (i) Subject to the notice and evidence requirements set out in by-law 9.8(a)(iii) and (iv), an employee, eligible casual employee or casual employee, who is adopting a child is entitled to up to two (2) days unpaid leave to attend any interviews or examinations required to obtain the adoption approval
  - (ii) The leave may be taken as:
    - A. a single continuous period of up to two (2) days; or
    - B. any separate period to which the employee and the CEO agree.
  - (iii) Notice and evidence requirements:
    - A. the notice must be given to the CEO as soon as practicable (which may be a time after the leave has started); and
    - B. the notice must advise the CEO of the period, or expected period, of the leave.
  - (iv) An employee who has given his or her CEO notice of the taking of unpaid pre-adoption leave must, if required by the CEO, provide evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination as required in order to obtain approval for the employee's adoption of a child.
- (b) Adoption leave – employee is nominated as primary care-giver upon initial placement of the child following adoption.
  - (i) up to 52 weeks unpaid leave where the employee has less than 12 months continuous service, or eligible casual employee, at the time of commencing leave. Leave may

commence at any time in the two (2) weeks before the day of placement and must end within 52 weeks of the day of the placement;

- (ii) up to three (3) years leave, with the first 14 weeks to be paid, provided the employee has completed at least one (1) year and less than five (5) years continuous service at the time of commencing leave. Leave may commence at any time in the two (2) weeks before the day of placement and must end within 36 months of the day of the placement; or
  - (iii) up to three (3) years leave, with the first 18 weeks to be paid, provided the employee has completed at least five (5) years continuous service at the time of commencing leave. Leave may commence at any time in the two (2) weeks before the day of placement and must end within 36 months of the day of the placement.
  - (iv) where an employee's qualifying period of 12 months continuous service referred to in by-law 9.8(b)(ii) ends within 14 weeks of the date on which the employee commenced adoption leave, paid leave will only apply for that part of the 14 week period commencing after the end of the qualifying period.
  - (v) where an employee's qualifying period of five (5) years continuous service referred to in by-law (b)(iii) ends within 18 weeks of the date on which the employee commenced adoption leave, the first 14 weeks will be paid leave and any additional leave (up to 4 weeks) will only apply for that part of the 18 week period commencing after the end of the qualifying period.
- (c) Adoption partner leave (includes concurrent leave) – initial placement of child – leave taken with employee's spouse.
- (i) in the case of an employee who has not completed 12 months continuous service, or an eligible casual employee, at the time of commencing leave, up to eight (8) weeks unpaid adoption leave which may commence at any time in the two (2) weeks before the day of placement, and can be taken at the same time that the employee's spouse is taking paid or unpaid adoption leave;
  - (ii) in the case of an employee who has completed at least one (1) year and less than five (5) years continuous service at the time of commencing leave, up to eight (8) weeks adoption leave, including one (1) week paid leave,

which may commence at any time in the two (2) weeks before the day of placement, and can be taken at the same time that the employee's spouse is taking paid or unpaid adoption leave;

(iii) in the case of an employee who has completed five (5) or more years continuous service at the time of commencing leave, up to eight (8) weeks adoption leave, including two (2) weeks paid leave, which may commence at any time in the two (2) weeks before the day of placement, and can be taken at the same time that the employee's spouse is taking paid or unpaid adoption leave.

(iv) In the case of adoption partner leave under by-laws 9.8(c)(i) to (iii):

A. leave is to be taken in the first 12 months from day of placement of the child.

B. unless the CEO agrees, leave must not start before the day of placement of the child.

C. leave may be taken in separate periods, but unless the CEO agrees, each period must not be shorter than two (2) weeks.

D. The employee must give notice to the CEO at least:

1) 10 weeks before starting the leave, unless paragraph 2) below applies;

2) if the leave is to be taken in separate periods of leave, and the leave is not the first of those periods of leave, four (4) weeks before starting the period of leave; or

3) if that is not practicable – as soon as practicable, which may be a time after the leave has started.

E. Concurrent leave is an exception to the requirement for parental leave to be available to only one parent at a time in a single unbroken period.

(d) Adoption (partner) leave – employee is nominated primary care-giver for the duration of the leave

- (i) up to 52 weeks unpaid adoption leave, where the employee has less than 12 months continuous service, or eligible casual employee, at the time of commencing leave, and provided that such leave must end within 24 months of the day of placement of the child;
  - (ii) up to three (3) years unpaid adoption leave, where the employee has completed more than 12 months continuous service at the time of commencing leave, and provided that such leave must end within 36 months of the day the placement.
- (e) To be entitled to adoption leave under by-laws 9.8(b) or 9.8(d), an employee must give the CEO the following notification and evidence:
- (i) written notification of the intention to apply for adoption leave as soon as is reasonably practicable after receiving notice of the approval of the placement of the child;
  - (ii) written application stating the dates on which the employee proposes to start and finish the period of adoption leave not less than 10 weeks before the first day of the proposed leave in the case of adoption leave taken under by-laws 9.8(b)(i) to (iii) and 9.8(d)(i) to (ii):
  - (iii) before the employee begins a period of adoption leave:
    - A. a statement from the adoption agency stating the day when the placement is expected to start; and
    - B. a statutory declaration stating that the employee intends to be the child's primary care-giver at all times while on adoption leave.
- (f) The employee will not be in breach of by-law 9.8(e) if the failure to give the required period of notice is because the employee is not given sufficient notice of the expected day of placement to enable compliance, or any other compelling circumstance.
- (g) Where an employee has commenced a period of adoption leave under by-laws 9.8(b) or 9.8(d) and the adoption is discontinued for any reason (including the death of the child), the entitlement to adoption leave may continue for maximum period of 52 weeks from the date of commencement of leave, unless the employee elects to resume duty, in which case the provisions of by-law 9.15 apply.
- (h) Subject to notice and evidence requirements set out in by-law 9.8(e), where an employee exercising adoption leave under by-



law 9.8(b)(i) to (iii) adopts another child during the period of leave, the employee can elect to commence another period of leave, in accordance with by-laws 9.8(b)(i), 9.8(b)(ii) or 9.8(b)(iii), from the day of placement of the child relating to the second adoption.

## 9.9 Combined parental leave

- (a) An employee couple (as defined in by-law (e)9.1(e), provided each satisfies the service requirements, may elect to combine their parental leave entitlements provided that the combined period of paid and unpaid leave, does not extend the maximum period of leave entitlement beyond three (3) years from the commencement of the leave;
- (b) Combined parental leave is subject to:
  - (i) provision of all applicable notice and evidence requirements under this by-law;
  - (ii) by-law 9.15(a) where the birth giver may not return to work any less than six (6) weeks after the date of birth of the child;
  - (iii) the birth giver using a minimum of:
    - A. six (6) weeks unpaid maternity leave in accordance with by-law 9.3(a)(i); or
    - B. six (6) weeks paid maternity leave in accordance with by-law 9.3(a)(ii) or 9.3(a)(iii);
  - (iv) concurrent leave being used by the employee couple for a maximum of eight (8) weeks and in accordance with concurrent leave provisions as set out in by-law 9.7(a)(iv);
  - (v) the balance of the combined leave being used by the member of the employee couple who has submitted a statutory declaration in which he or she stated that he or she intends to be the primary caregiver for the total remaining unpaid leave balance;
  - (vi) a maximum of two (2) interchanges of employees sharing the combined parental leave; and
  - (vii) where an employee couple combine their paid leave entitlements and one (1) member of the employee couple takes a period of paid leave as part of the combined paid leave balance, the employee shall be paid his or her normal salary for the period of leave.

#### 9.10 Parental leave at half pay

- (a) An employee who is entitled to paid parental leave under this by-law may apply to extend the period of paid leave by taking it at half pay, or a combination of full pay and half pay.
- (b) Where an employee applies to extend the period of paid leave under by-law 9.10(a):
  - (i) leave entitlements will accrue as if the employee had utilised the amount of parental leave at full pay;

*For example, if an employee utilises 14 weeks of parental leave over a period of 28 weeks at half pay, all leave entitlements will accrue as if the employee had used 14 weeks at full pay, and no leave entitlements will accrue over the final 14 weeks of parental leave on half pay.*

- (ii) salary and allowances will be paid at 50% of the usual rate for the entire period of parental leave at half pay; and
- (iii) unless otherwise approved by the CEO under this by-law, the maximum period of parental leave will not be extended.

#### 9.11 Access to other leave entitlements while on parental leave

- (a) An employee on unpaid parental leave may access accrued recreation leave and long service leave entitlements.
- (b) Where an employee on parental leave accesses other leave entitlements under by-law 9.11(a), the taking of that other paid leave:
  - (i) does not break the continuity of the period of parental leave; and
  - (ii) the maximum period of parental leave will not be extended.

#### 9.12 Employment while on parental leave

- (a) With the exception of 'keeping in touch days' under by-law 9.12(b) and subject to the CEO's approval, an employee on unpaid parental leave may return to duty for any period with the Agency, or another Agency.
- (b) Keeping in touch days
  - (i) An employee may agree to attend the workplace on up to 10 separate occasions of up to one (1) day each so as to

keep in touch with developments in the workplace (for meetings and training etc) provided that:

- A. an employee will be paid his or her normal salary for the day's (or part day's) work performed for the purpose of a keeping in touch day; or
  - B. an employee who performs work under by-law 9.12(b)(i) during a period of paid parental leave will be paid his or her normal salary for the day's (or part day's) work performed and the CEO will authorise the equivalent period of parental leave to be re-credited.
- (ii) After considering all the circumstances, including any duty performed under by-law 9.12(a), the CEO may approve an amount of keeping in touch days in excess of the amount specified in by-law 9.12(b)(i).
- (c) An employee on unpaid parental leave may engage in outside employment in accordance with the PSEM Act.
- (d) Employment under by-law 9.12 (a), 9.12(b) and 9.12(c) above will not:
- (i) prevent the employee from re-commencing parental leave; or
  - (ii) extend the maximum period of parental leave.

## Communication

### 9.13 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the CEO will take reasonable steps to:
- (i) make information available in relation to; and
  - (ii) provide an opportunity for the employee to discuss,
- any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee will take reasonable steps to inform the CEO about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee

intends to request to return to work on a part-time basis in accordance with by-law 9.15(b).

## Variation

### 9.14 Extend period of parental leave

*(Note: An employee who has initially taken three (3) years parental leave is not entitled to extend his or her period of parental leave under this by-law)*

- (a) An employee who has commenced his or her initial nominated parental leave period under by-laws 9.3(a), 9.7(b)(i), 9.7(b)(ii), 9.8(b)(i), 9.8(b)(ii), 9.8(b)(iii), 9.8(d)(i) or 9.8(d)(ii) and provided that the initial nominated parental leave period is less than 12 months, may extend at his or her discretion the initial nominated parental leave on one occasion to provide a total of up to 12 months parental leave since commencement of leave, by giving the CEO at least four (4) weeks written notice before the end of the initial leave period.
- (b) Where an employee has accessed his or her right to extend parental leave on one occasion under by-law 9.14(a) and the employee intends to request a further period of parental leave, or where an employee's initial nominated parental leave period was 12 months or more (but less than three (3) years) and the employee intends to request a further period of parental leave, an employee may request, subject to CEO approval and notice periods set out in by-law 9.14(c), to extend parental leave as follows:
  - (i) in relation to leave (up to 52 weeks) taken under by-laws 9.3(a)(i), 9.8(b)(i), 9.8(b)(i) or 9.8(d)(i):
    - A. where an employee's extension under by-law 9.14(a) results in the employee's total period being less than 12 months, a further extension up to a total of 52 weeks.
    - B. where an employee has completed 52 weeks parental leave, to extend parental leave by up to a further 52 weeks.
    - C. an employee cannot extend the period of parental leave beyond 24 months after the date of birth or day of placement of the child.
  - (ii) in relation to leave (up to three (3) years) taken under by-laws 9.3(a)(ii), 9.3(a)(iii), 9.7(b)(ii), 9.8(b)(ii), 9.8(b)(iii) or 9.8(d)(ii):

- A. where an employee's extension under by-law 9.14(a) results in the employee's total period being less than 12 months – a further extension up to a total of three (3) years.
  - B. where an employee's subsequent extension in by-law 9.14(a) results in the employee's total period being less than three (3) years – a further extension up to a total of three (3) years.
  - C. an employee cannot extend the period of parental leave beyond three (3) years after the date of birth or day of placement of the child.
- (c) An employee must give the CEO a written request to extend parental leave at least:
    - (i) four (4) weeks before the end of the nominated period where employee has been on parental leave for a period up to 52 weeks; or
    - (ii) 12 weeks where the employee has been on parental leave for a period in excess of 52 weeks.
  - (d) Except for by-law 9.10(a), the CEO's response to an employee's request to extend leave under this by-law will be in accordance with by-law 9.14.
  - (e) Any additional parental leave granted under this by-law will be unpaid.

## Returning to work

### 9.15 Returning to work after a period of parental leave

- (a) An employee on ordinary maternity leave may not return to work any less than six (6) weeks after the date of birth of the child except where the employee provides a medical certificate stating that she is fit to work during that period.
- (b) To assist in reconciling work and parental responsibilities, if agreed between the CEO and the employee, the employee may return to work on a part-time basis to care for the child who is of school age or younger, provided that such request is not made less than eight (8) weeks prior to the date that the employee is due to return to work. Responses to requests will be in accordance with by-law 9.16.

- (c) If agreed between the CEO and the employee, an employee whose period of parental leave has started may reduce the period of parental leave. Responses to requests will be in accordance with by-law 9.16.

A written application must be made at least:

- (i) four (4) weeks before the employee's preferred date of return where the employee is on parental leave for a period up to 52 weeks; or
  - (ii) 12 weeks before the employee's preferred date of return where the employee is on parental leave for a period in excess of 52 weeks.
- (d) Unless otherwise provided under this by-law, an employee must give the CEO written notice of the date on which he or she intends to return to work following a period of parental leave as follows:
    - (i) four (4) weeks where the employee has been on parental leave for a period of up to 52 weeks; or
    - (ii) 12 weeks where the employee has been on parental leave for a period in excess of 52 weeks.
- (e) An employee returning from a period of up to 24 months' parental leave is entitled to the position which he or she held immediately prior to commencing leave, or if the pre-leave position no longer exists, to a position of similar pay and status, or in the case of an employee who:
    - (i) was transferred to a safe job under by-law 9.4 prior to commencing leave, to the position held immediately prior to such transfer; or
    - (ii) was promoted to a new position during the period of parental leave, to the new position.

## Right to request

### 9.16 CEO's consideration of employee's request

In relation to an employee's request made under by-law 9.14(b), 9.15(b) or 9.15(c)

- (a) The CEO will consider the request and respond in writing within 21 days having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on

reasonable business grounds. Reasonable business grounds include, but are not limited to:

- excessive cost of accommodating the request;
- that there is no capacity to reorganise work arrangements of other employees to accommodate the request;
- the impracticality of any arrangements that would need to be put in place to accommodate the request, including the need to recruit replacement staff;
- that there would be significant loss of efficiency or productivity;
- that there would be a significant negative impact on customer service.

(b) The employee's request and the CEO's decision in respect of the request must be recorded in writing.

#### 9.17 Replacement employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred to perform the work of another employee who is going to take, or is taking parental leave.
- (b) Before the CEO engages a replacement employee the CEO must inform that person:
- (i) of the temporary nature of the employment;
  - (ii) of the return to work rights of the employee who is being replaced; and
  - (iii) of the rights of the employer to require the employee taking parental leave to return to work if the employee ceases to have any responsibility for the care of the child.

#### Effect on service

#### 9.18 Effect of parental leave on service

- (a) A period of parental leave does not break an employee's continuity of service.
- (b) Subject to by-law 9.18(d) below, any period of paid parental leave, including paid leave as a result of access to accrued entitlements under by-law 9.11 will count as service.

- (c) Subject to by-law 9.18(e) below, any period of unpaid parental leave will not count as service.
- (d) Where any employee elects to take paid parental leave at half pay in accordance with by-law 9.10, only the first 1 week, 2 weeks, 14 weeks or 18 weeks, whichever is applicable, of the period of paid parental leave will count as service.
- (e) With the exception of any period during which the employee is engaged in outside employment during normal working hours, the first 14 weeks or 18 weeks, whichever is applicable, from commencement of unpaid maternity, special maternity leave or adoption leave resulting from the application of by-laws 9.3(b), 9.3(c), 9.6(f), 9.6(g), 9.8(b)(iv) and 9.8(b)(v), will count as service.

### Superannuation contributions

#### 9.19 Superannuation contributions during period of parental leave

- (a) This provision is to provide employer superannuation contributions benefits to a female employee, with 12 months continuous service at the time of commencing parental leave, and who may take unpaid leave during the first six (6) months of her parental leave.
- (b) An employee who is either the birth giver or primary carer in the case of adoption leave, for the first six (6) months of parental leave will continue to receive employer superannuation contributions, as per relevant superannuation legislation and superannuation fund rules, for the first six (6) months of parental leave.
- (c) The maximum amount of employer superannuation contributions provided under this by-law will be equivalent to the amount of employer superannuation contributions the employee would have received had the employee not been on approved parental leave.