



Leave and public holidays

Background

1. The Enterprise Agreement provides for the following types of leave:
 - Annual leave, including Excess (Canberra) Travel Leave
 - Personal leave
 - Unpaid carer's leave
 - Compassionate leave
 - Community service leave
 - Miscellaneous leave
 - Other leave, including study leave (refer to separate Guideline 'Studies Assistance')
 - Leave for reasons of family and/or domestic violence (refer to **Attachment A**)
 - Long service leave
 - Maternity leave
 - Adoption leave
 - Supporting partner leave
 - Leave without pay, including unpaid parental leave
 - Public holidays, including annual close down.
2. Employees affected by or at risk of experiencing family and/or domestic violence who require time off work have access to a range of leave options, including miscellaneous leave, personal leave and/or flexible working arrangements, to enable flexibility in the provision of leave that is appropriate to individual circumstances (refer to **Attachment A**).
3. Eligible employees may access the Paid Parental Leave Scheme (PPL Scheme) or Dad and Partner Pay (DAPP) in addition to entitlements to paid and unpaid leave provided under the Enterprise Agreement. Some information on the PPL Scheme and DAPP is provided below, but employees should contact Services Australia for further information (refer to paragraphs 67-99).
4. Employees who will be the primary carer of a child born through a lawful surrogacy arrangement are entitled to paid adoption leave (refer to paragraphs 100-107).
5. Employees have access to paid and unpaid leave following a miscarriage, stillbirth or post-partum death of a child (refer to paragraphs 113-119).

6. Employees have access to paid and unpaid leave for cultural and/or ceremonial purposes (refer to paragraphs 125-127).
7. With the exception of long service leave, paid leave provided under the Enterprise Agreement is not available to casual employees.
8. The separate Guidelines 'Ongoing, Non-ongoing and Casual Employment' and 'Recognition of Prior Service' also provide relevant information.

Leave applications

- ▶ Enterprise Agreement clause 36
9. Employees are to ensure that leave applications, through PEMS or the hardcopy leave form, are submitted to the employing Member, or authorised person, as soon as practicable for approval. Hardcopy forms must be immediately forwarded to the Department following approval.

Approval of leave by the Department of Finance during deferral of termination

10. Where the employing Member has ceased to have employment powers under the relevant Part of the MOP(S) Act and the employment of that person's employees has been deemed not to have terminated by virtue of a direction made under subsections 16(5) or 23(4) of the MOP(S) Act, the Department may approve leave under the terms of the Enterprise Agreement and this Guideline.

Annual leave

- ▶ Enterprise Agreement clause 37
11. Annual leave accrues daily at the rate of four weeks (152 hours) per year of service for full-time employees. The accrual of annual leave is pro rata for part-time employees. As a guide, the accrual rate for a full-time employee, working 38 hours per week, is approximately 12 hours 40 minutes per month of eligible service - the monthly figure varies slightly from month to month depending on the number of calendar days in the month. Annual leave may be taken as it accrues.
 12. There is no limit on the amount of annual leave that may be accrued by employees. However, the purpose of annual leave is to enable employees to have sufficient breaks from the workplace to enable them to perform effectively.

13. All decisions about taking annual leave, apart from decisions made under clause 37.7 (where an employing Member may direct an employee to take a period of annual leave in certain circumstances), should be agreed between the employee and the employing Member, taking into account both the needs and wishes of the employee and the requirements of the workplace. Where reasonable workplace requirements prevent the employing Member from agreeing to a period of annual leave as requested, the reasons for the decision should be discussed with the employee and alternative arrangements agreed.
14. In accordance with clause 37.4 of the Enterprise Agreement, employees may take a period of annual leave at full pay, half pay or a combination of the two.

Excess (Canberra) Travel Leave (ECTL)

- ▶ Enterprise Agreement clause 54.3-54.5
 - ▶ [Form 41 – Additional Annual Leave Credit](#)
 - ▶ Refer to [Excess \(Canberra\) Travel Leave page](#)
15. Clause 54.3 entitles employees who are required to travel from their work base in remote and/or rural locations to Canberra on a Sunday or public holiday in their work base for a Parliamentary sitting to claim a half-day of additional annual leave for each occasion of eligible travel.
 16. A Parliamentary sitting is defined in clause 54.55 of the Enterprise Agreement to mean the following:
 - a. a sitting of either House of Parliament, including a joint sitting; and
 - b. Senate Estimatesbut a Parliamentary sitting does not include Senate Estimates spill-over or additional hearings or other Parliamentary Committee hearings.
 17. An employee is eligible to claim ECTL for travel from their work base to Canberra:
 - a. on a Sunday for a Parliamentary sitting commencing on a Monday or a Tuesday; or
 - b. on a public holiday in their work base for a Parliamentary sitting commencing on the following day.
 18. The number of days ECTL that may be claimed each year will vary with the number of Parliamentary sittings each year. There is no limit to the number of days an employee can claim for ECTL per year (e.g. if there are 20 Parliamentary sittings in one year, an employee would be able to claim up to 10 days' ECTL should they undertake eligible travel for every Parliamentary sitting).
 19. Claims for ECTL must be received by the Department within six months after the travel has been completed or the additional leave will not be provided.

Personal leave

- ▶ Enterprise Agreement clause 38
20. For full-time employees, a credit of 15 days is available from the date of commencement of employment and a further 15 days accrues on completion of each further 12 months of eligible service. Part-time employees are entitled to a pro rata accrual of personal leave.
 21. Although there is no cap on the period of personal leave that may be approved for caring purposes (up to the limit of the employee's available leave credit), it is expected that employees will access carer's leave reasonably and responsibly in accordance with clause 38.3 of the Enterprise Agreement (e.g. personal leave is not available for employees to care for healthy children during school holiday periods).
 22. Employees may take personal leave at either full pay or half pay.
 23. When applying for personal leave, employees must indicate the type of personal leave taken/to be taken from the list below:
 - a. personal illness or injury;
 - b. carer's leave (illness/injury); or
 - c. carer's leave (emergency).
 24. Any personal leave in respect of the personal illness or injury of the employee taken in excess of an employee's credit, within the limits set out in paragraph 29, will be considered personal leave without pay, which counts as service.
 25. Consistent with section 107(3) of the *Fair Work Act 2009*, it is a matter for employing Members to determine when and/or whether a medical certificate or other evidence, such as a statutory declaration, must be provided by the employee, to the employing Member, to cover an absence of personal leave, including carer's leave. Options could include a requirement that employees provide a certificate for any absence likely to exceed a certain number of consecutive days and/or after a specified number of days of personal leave per year has been used. Requirements should be advised to employees as soon as possible after commencing employment and/or should the employing Member change those requirements.
 26. A medical certificate or statutory declaration must be provided to the Department where an employee seeks to have any form of paid leave (e.g. annual or long service leave, re-credited in order to use personal leave). A medical certificate is required to cover any absence associated with a workers' compensation claim, as well as for absences on personal leave due to illness during the 52 week absence period allowed by the *Maternity Leave (Commonwealth Employees) Act 1973*.
 27. In the following circumstances, an employee may be required to undergo a medical examination to determine his/her fitness for duty:
 - a. where the employee is continuously absent due to illness or injury for a period in excess of four weeks; or
 - b. where a report from a treating doctor indicates that the employee is unfit for duty and is likely to remain so for an indefinite period or period of at least four weeks; or

- c. where the employing Member has reason to believe the employee is unfit, for some or all of his/her duties, for an indefinite period or a period of at least four weeks.
28. In the circumstances described in paragraph 27, the employing Member should provide any medical certificates submitted by the employee to the Department.
 29. The maximum continuous absence that can be approved as personal leave to count as service due to non-compensable illness or injury is 52 weeks, unless the employee still has paid personal leave credits remaining in which case the employee can use that paid personal leave in accordance with normal procedures. Other paid or unpaid leave granted during the absence due to personal illness or injury does not break continuity for the 52 week period under this paragraph. Absence due to illness or injury after 52 weeks continuous absence may be granted as leave without pay and will not count as service for any purpose.
 30. Where an employee has exhausted all paid personal leave and continues to be absent on personal illness or injury, they may access available annual and long service leave credits. Any such leave granted will not break continuity for the purposes of paragraph 29. Before long service leave is granted, a report on the employee's state of health may be obtained from the Department's health services provider.
 31. Where an employee has been absent continuously due to illness for more than 52 weeks and subsequently wishes to return to duty, the employee must first be examined by the Department's health services provider to confirm his/her fitness for duty.
 32. Personal leave may be accessed where an employee is affected by or at risk of experiencing family and/or domestic violence (refer to **Attachment A**).

Unpaid carer's leave

- ▶ Enterprise Agreement clause 39

33. Unpaid carer's leave is available for all employees where personal leave is unavailable. It can be taken as one continuous period or in separate periods agreed between the employee and employing Member.

Compassionate leave

- ▶ Enterprise Agreement clause 40

34. Compassionate leave may be used in addition to personal leave and miscellaneous leave.
35. An employee taking compassionate leave must give their employing Member notice as soon as they can (this may be after the leave has started). The employee must tell the employing Member of the period, or expected period, of the leave.

Community service leave

- ▶ Enterprise Agreement clause 41

36. Eligible community service activities are defined at subsection 109(1) of the *Fair Work Act 2009* as:
- jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
 - a voluntary emergency management activity (defined in detail at subsections 109(2) and (3) of the *Fair Work Act 2009* and involving dealing with an emergency or disaster as a member of a recognised emergency management body); or
 - an activity prescribed in the *Fair Work Regulations 2009* (no such activities have been prescribed at this date).
37. An employee who wishes to access community service leave must provide their employing Member with notice of the absence for community service activities as soon as practicable before or after the leave has started and advise the employing Member of the period, or expected period, of absence.
38. Where an employee, other than a casual employee, undertakes jury service, the employee must provide evidence to the Department:
- that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
 - of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable to the employee for the period.
- Where the above evidence is not provided, the employee will not be paid community service leave. Where the evidence is provided, the employee's pay will be reduced by the total amount of jury service pay that has been paid or is payable.
39. An application for community service leave must include evidence that the employee is engaging in an eligible community service activity.

Miscellaneous leave

- ▶ Enterprise Agreement clause 42

40. Miscellaneous leave may be accessed where an employee is affected by or at risk of experiencing family and/or domestic violence (refer to **Attachment A**).
41. Paid miscellaneous leave may be approved by the employing Member without also requiring approval from the Department in the following circumstances (subject to the stated time limits):

Reason for leave request	Reasonable period of absence
Moving house, including approved relocations between localities	1 day
Graduation ceremony for a course approved for studies assistance under the Enterprise Agreement	1 day
An immediate family member or household member contracts or develops a personal illness that poses a serious threat to his or her life, or sustains a personal injury that poses a serious threat to his or her life (Note: this is in addition to 2 days' compassionate leave in accordance with clause 40)	1 day
Time to attend a funeral of a family member (including but not limited to an immediate family member) household member or friend (Note: this is in addition to 3 days' compassionate leave in accordance with clause 40)	1 day
Attending to duties and other arrangements relating to the death of a family member (including but not limited to an immediate family member), household member or friend (e.g. an executor of a will; cultural, ceremonial or religious duties)	2 days
Flooding, bushfires, other natural disasters etc	up to 3 days
Workplace relations training where an employee is a delegate of an employee organisation	5 days per year
Family and/or domestic violence	Refer to Attachment A

42. The employing Member should not unreasonably refuse to approve to a request by the employee to take paid miscellaneous leave for reasons specified above.
43. Where the employing Member considers there are other circumstances where it may be appropriate to approve paid miscellaneous leave, or where the duration of such leave exceeds the periods described above, the approval is subject to both the employing Member and the Department.

44. An application for miscellaneous leave must state the reason for the leave, and appropriate supporting evidence or explanation must be attached to the application form.
45. An employee who accesses miscellaneous leave for workplace relations training should submit the application approved by their employing Member to the Department as soon as possible before the course or seminar occurs, accompanied by evidence that the employee will be attending the course or seminar (e.g. a course booking receipt).

Other leave

- ▶ Enterprise Agreement clause 43

46. Under clause 43.1 of the Enterprise Agreement:
 - a. Defence Force Service means enlistment or training (including Reserves, but excluding Australian Army, Navy and Air Force Cadets);
 - b. participation in major international multi-disciplinary sporting events means as a competitor representing Australia or as an accredited official at an event such as the Olympic or Commonwealth Games;
 - c. courses of study approved under clause 58.2 of the Enterprise Agreement means those courses approved under the studies assistance provisions (refer to separate Guideline 'Studies Assistance'). Computer systems training, the Professional Development Program and ad hoc training are regarded as time on duty;
 - d. war service sick leave means leave for returned service personnel for various medical or review purposes under the *Veterans' Entitlements Act 1986*; and
 - e. political exchange leave means participation as a delegate on a Political Exchange Program.
47. An application for other leave must state the reason for the leave, and appropriate supporting evidence or explanation must be attached to the application form.

Long service leave

- ▶ Enterprise Agreement clause 45

48. An employee must have 10 years of qualifying service before becoming eligible for long service leave.
49. Long service leave accrues at the rate of 3/10ths of a month for each year of eligible service. This means that after 10 years of eligible service, an employee will have accrued three months of long service leave. Long service leave continues to accrue at the rate of 3/10ths of a month for each year of eligible service after 10 years.
50. Long service leave is granted in calendar days (i.e. including weekends and public holidays that fall between the start and the end of the leave).

51. Periods of long service leave must be a minimum of seven consecutive calendar days at full pay or 14 consecutive days at half pay. Periods of long service leave may not be broken by other paid leave, although other paid leave may be used at either or both ends of a period of long service leave.
52. Employees ceasing Commonwealth employment after at least 10 years of eligible service receive payment in lieu of unused long service leave.
53. Employees who are 55 years and over and have at least 12 months of eligible service receive pro rata payment in lieu of long service leave upon cessation of employment.
54. Where the employment of an employee with less than 10 years of service, but at least 12 months eligible service, ceases due to retrenchment or ill health, they will receive pro rata payment in lieu of long service leave. Retrenchment includes any termination of employment due to the operation of the MOP(S) Act.

Maternity leave

- ▶ Enterprise Agreement clause 46

55. The *Maternity Leave (Commonwealth Employees) Act 1973* (the ML Act) does not apply to employees who do not have an entitlement to paid personal leave (i.e. casual employees).
56. The ML Act provides for a maximum period of absence of 52 weeks.
57. Under the ML Act, a person is required to commence maternity leave six weeks before the expected birth of the child. However, subject to providing the Department with written advice from a medical practitioner (a midwife is not a medical practitioner for this purpose) that the employee is fit to continue normal duties, the employing Member may permit the employee to defer the start of the required absence to the date specified by the medical practitioner. The employee is then required to be absent for a period of six weeks commencing on the date of the birth.
58. Where the child is born earlier than six weeks before the expected date of birth, the required absence commences on the date of birth and continues for six weeks. In this case, the 52 week period of maternity leave absence commences from the date of birth.
59. With the permission of the employing Member, the employee may resume duty before the end of the required six week absence, subject to providing written advice from a medical practitioner (a midwife is not a medical practitioner for this purpose) that the employee is fit to do so.
60. The ML Act provides that an eligible employee is entitled to full pay for the first 12 weeks of absence, or such lesser period that is taken. The Enterprise Agreement provides employees entitled to paid maternity leave under the Act with an additional four weeks paid leave to be taken immediately following the period of paid maternity leave provided under the ML Act. This provides a maximum of 16 weeks of paid maternity leave.

61. To be eligible to receive paid maternity leave, an employee must have at least 12 months continuous eligible Commonwealth service. Please note that service during which the employee was not entitled to personal leave is not eligible service for this purpose (e.g. periods during which a loading in lieu of leave was paid).
62. The Enterprise Agreement allows maternity leave to be taken on a half pay basis as an administrative arrangement. Where the leave is taken on half pay, only the first half of the leave will count as service, the second half of the leave is treated as maternity leave without pay and will not count as service.
63. If the employee does not have 12 months continuous eligible service, the employee is still subject to the ML Act and must absent herself from duty during the required absence period. The absence will be without pay but will count as service for all purposes. If the employee completes 12 months continuous eligible service during the first 16 weeks of maternity leave, the employee is entitled to payment for the period between the completion of the qualifying period and the end of the first 16 weeks.
64. By default, leave taken after the first 16 weeks and during the maximum 52 week absence allowed by the ML Act is maternity leave without pay and does not count as service for any purpose. However, where available, other paid leave (e.g. annual leave or long service leave), can be taken instead and such leave will count as service for all purposes. During this period, if personal leave is used on account of the ill health of or injury to the employee, a medical certificate stating the employee is unfit for duty and indicating the condition from which the employee is suffering must be provided to the Department.
65. Applications for maternity leave should be submitted to the Department as soon as possible (at least three months prior to the expected date of birth) and must be accompanied by a written statement from a medical practitioner or midwife specifying the expected date of birth. Upon receiving the application, the Department will provide written advice to the employee of her entitlements, period(s) of required and maximum absences, impact on superannuation contributions and other related matters.
66. If an employee's employment is terminated while on paid maternity leave, or within the period commencing six weeks prior to the expected date of birth (but before the commencement of maternity leave), the employee may be entitled to receive a payment in lieu of the remaining paid maternity leave in certain circumstances in accordance with clauses 46.5 and 46.6 of the Enterprise Agreement. This payment will be reduced by any subsequent entitlement to paid maternity leave with another employer (e.g. if the employee is an APS employee and continues to be entitled to paid maternity leave under the ML Act in relation to the APS employment).

The Paid Parental Leave Scheme

► Services Australia – Parental Leave Pay

67. The PPL Scheme administered by Services Australia provides eligible employees who are the primary carers of children born or adopted on or after 1 July 2020 with up to 18 weeks of parental leave pay at the National Minimum Wage as two separate types of Parental Leave Pay:
- a. A Paid Parental Leave (PPL) period of up to 12 weeks, which is paid as a single continuous block. This needs to be used before the employee has returned to work from leave and within 12 months of the birth or adoption of their child.
 - b. Up to 30 Flexible PPL days. These need to be used after the Paid Parental Leave period and within 24 months of the birth or adoption of their child. Flexible PPL days can be used both before and after the employee has returned to work.
68. Employees, who are eligible for PPL, can choose how and when they want to access their Flexible PPL days. They can connect none, some or all of their Flexible PPL days to their 12 week PPL period. This will give them a continuous block of up to 18 weeks.
69. PPL pay is not a leave entitlement, but a payment made to an eligible employee while that employee is on leave.
70. The employee may be on any form of paid or unpaid leave, including maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* while in receipt of payments under the PPL Scheme. If the employee is on paid leave, parental leave pay will be paid in addition to the employee's normal pay. Applications for paid and unpaid leave for the period of parental leave pay should be made in the normal way applying to the particular leave type.
71. Flexible PPL days can only be paid on days that the employee is not working (e.g. an employee who has returned to work part-time Monday to Thursday can claim Flexible Paid Parental Leave on Fridays).

Applications

72. Applications for the PPL Scheme must be submitted to Services Australia. Employees can apply for the PPL Scheme:
- a. through [myGov](#);
 - b. at any [Services Australia Centre](#) across Australia; or
 - c. by contacting Services Australia on 13 61 50.
73. Upon receiving an application, Services Australia will assess eligibility against a number of criteria including Australian residency status, relationship status, relationship to the newborn or recently adopted child, a PPL work test, and the employee's individual adjusted taxable income received in the previous financial year. Services Australia advises the Department when an employee is eligible for the PPL Scheme.
74. Applications for the PPL Scheme can be submitted to Services Australia by the primary carer up to three months in advance of the child's expected date of birth or adoption.

Employees are encouraged to apply to Services Australia at their earliest convenience to ensure that payments can be processed from the nominated date after the child's birth or adoption.

Payment of parental leave pay

75. Parental leave pay is paid for a maximum of 18 weeks.
76. For the 12 week paid parental leave block and any of the Flexible PPL days connected to the block, employees are paid PPL through the usual pay process administered by the Department.
77. All other Flexible PPL days are paid by Services Australia.
78. Parental leave pay is subject to tax and does not count as salary for superannuation purposes.
79. If an employee returns to work or ceases employment during the 12 week payment block, PPL will cease from that date. However, employees can still access the 30 Flexible PPL days after their return to work. In some cases, the unused period of parental leave pay may be transferred to another carer who meets the eligibility criteria. Employees who decide to return to work before the end of the 12 week period must notify the Department and Services Australia as soon as possible to avoid any overpayments. Any overpayment is a debt owed by the employee to the Commonwealth and will be recovered in accordance with clause 28 of the Enterprise Agreement.

'Keeping in touch' days

80. The *Fair Work Act 2009* and the PPL Scheme include 'keeping in touch' provisions, which allow an employee a total of 10 'keeping in touch' days during unpaid parental leave and PPL.
81. These provisions allow an employee to undertake paid work on a day, provided:
 - (a) the purpose of performing the work is to enable the person to keep in touch with his or her employment in order to facilitate a return to that employment after the end of the period of leave (activities such as training days, planning days and conferences would meet this requirement – a keeping in touch day is not intended to enable an employee to perform their normal duties); and
 - (b) both the person and the employer consent to the person performing work for the employer on that day; and
 - (c) the day is not within 14 days after the child was born.
82. Work undertaken under these provisions will not be considered a return to work for the purposes of the PPL Scheme.
83. Where an employee exceeds the 10 day limit, the employee is considered to have broken the continuity of their period of unpaid leave or returned to work and parental leave pay will cease from that date. However, where an employee, with the agreement of their employer, commences another period of unpaid parental leave immediately after the initial 12 months' leave, the employee may have a second allocation of 10 'keeping in touch' days.

84. An employee will be paid their usual salary in addition to any payments under the PPL Scheme (if applicable) for the hours worked on a 'keeping in touch' day. To enable payment, the employing Member, or an authorised person of the employing Member, must notify the Department via the Staff Help Desk by email: mpshelp@finance.gov.au.
85. Hours of work on a 'keeping in touch' day are treated as hours of duty and are counted towards the accrual of leave entitlements, including annual leave and personal leave. Employer superannuation payments and, in some cases, employee superannuation payments will also be payable. As a 'keeping in touch' day is work, it will break the period of approved paid or unpaid leave in which it occurs but does not break the continuity of a period of unpaid leave for the purposes of the *Fair Work Act 2009*.

Examples:

86. Example 1: Wendy has a due date of 1 September. Wendy applies for 16 weeks of paid maternity leave commencing six weeks before the expected birth followed by 18 weeks of unpaid maternity leave.
87. Wendy applies to Services Australia to access the PPL scheme and receive parental leave pay for the 18 week period of her unpaid maternity leave. This provides Wendy with 16 weeks of paid maternity leave under the Enterprise Agreement at her usual salary and then 18 weeks of parental leave pay at the National Minimum Wage.
88. Example 2: Anna has a due date of 1 July. Anna applies for 32 weeks of paid maternity leave at half pay commencing two weeks before the expected date of birth. Anna also applies to take 12 weeks of annual leave at half pay.
89. Anna applies to Services Australia to access the PPL scheme and receive parental leave pay for 18 weeks from the commencement of her paid maternity leave. Anna is paid half her usual salary plus PPL at the National Minimum Wage for the first 18 weeks of her paid maternity leave. She is then paid half her usual salary for the remaining 14 weeks of her paid maternity leave and a further 12 weeks at half pay for her annual leave.

Dad and Partner Pay

► [Services Australia – Dad and Partner Pay](#)

90. DAPP is administered by Services Australia and provides eligible employees who are the father or partner caring for a child born or adopted from 1 January 2013 with up to two weeks of parental leave pay at the National Minimum Wage.
91. DAPP is not a leave entitlement, but a payment made by Services Australia to an employee assessed as being eligible while that employee is on unpaid leave.
92. DAPP can be taken any time in the first year after birth or adoption.
93. The employee must not be on any form of paid leave and must not work while in receipt of DAPP. Applications for unpaid leave, such as unpaid parental leave or leave without pay, should be made to cover the DAPP period.

Applications

94. Applications for DAPP must be submitted to Services Australia. Employees can apply for DAPP:
 - a. through [myGov](#);
 - b. at any [Services Australia Centre](#) across Australia; or
 - c. by contacting Services Australia on 13 61 50.
95. Upon receiving an application, Services Australia will assess eligibility against a number of criteria including Australian residency status, relationship to the newborn or recently adopted child, a work test, and the employee's individual adjusted taxable income received in the previous financial year.
96. Applications for DAPP can be submitted to Services Australia by the applicant only and up to three months in advance of the child's expected date of birth or adoption. Employees are encouraged to apply to Services Australia at their earliest convenience to ensure that payments can be processed from the nominated date after the child's birth or adoption.

Payment of DAPP

97. Employees are paid DAPP directly by Services Australia as a one-off payment. DAPP is taxable income and does not count as salary for superannuation purposes.
98. DAPP is paid for a maximum of two weeks. DAPP ceases on the child's first birthday or one year from the date of adoption. In order to receive the full two weeks payment, the DAPP start date, and therefore the commencement date of unpaid leave, needs to be within 50 weeks of the child's birth or adoption.
99. If an employee returns to work or ceases employment during the two week DAPP period (in which the employee must be on unpaid leave), the DAPP one-off payment may be required to be amended by Services Australia. Employees who return to work or cease employment before the end of the two week DAPP period must notify Services Australia as soon as possible.

Adoption leave

- Enterprise Agreement clause 47

100. Paid adoption leave is available to eligible employees in accordance with clause 47 of the Enterprise Agreement.
101. To be eligible to receive paid adoption leave, an employee must have at least 12 months continuous eligible Commonwealth service. Note that service during which the employee was not entitled to personal leave is not eligible service for this purpose (e.g. periods during which a loading in lieu of leave was paid).

102. There is no entitlement to unpaid adoption leave under the Enterprise Agreement. An employee may access the unpaid parental leave provisions of the Fair Work Act 2009 or apply for leave without pay. An employee may also apply to use annual or long service leave, if available. Other paid leave may not be used to substitute for the paid adoption leave or to extend the period of 16 weeks of paid adoption leave.
103. The Enterprise Agreement allows adoption leave to be taken on a half pay basis as an administrative arrangement. Where the leave is taken on half pay, only the first half of the leave will count as service, the second half of the leave is treated as leave without pay and will not count as service.
104. Applications for adoption leave should be submitted to the Department as soon as possible prior to the adoption or intended adoption, and must be accompanied by sufficient evidence to satisfy the Department that an adoption has occurred or will occur, and to satisfy the provisions of the leave, such as the age of the child. Employees will be eligible for adoption leave before the formal adoption is finalised taking into account the practical arrangements of the adoption process. For example, where an employee participates in a transition period before the formal adoption, adoption leave will be available during the transition period.
105. An employee who will be the primary carer of a child born through a lawful surrogacy arrangement is entitled to paid adoption leave if the employee has obtained a Parentage Order from the Supreme Court of the State or Territory in which the birth occurred. The leave may commence from the date the Parentage Order is made.
106. A child born through a surrogacy arrangement will not be considered a child of the employee where the employee was required to donate genetic material for the pregnancy for the purposes of clause 47.2(c). This is an exception to clause 47.2 which states that for an employee to be eligible to receive paid adoption leave, the adopted child must not be a child of the employee or the employee's spouse, de facto partner or a child of an immediate family member. All other requirements of clause 47.2 must be met for an employee to be entitled to paid adoption leave.
107. Surrogacy arrangements are regulated by the States and Territories. All States and Territories, other than the Northern Territory, have legislation that regulates surrogacy arrangements. Employees are encouraged to seek their own legal advice if they intend to pursue surrogacy either as a surrogate or intended parent.

Supporting partner leave

- ▶ Enterprise Agreement clause 48

108. For the purpose of supporting partner leave for adoption, the adopted child must meet the requirements set out at clause 47.2 of the Enterprise Agreement.
109. In the circumstance that the partner of an employee gives birth to more than one child or adopts more than one child at a point in time, the employee is only entitled to five weeks of supporting partner leave.

110. Supporting partner leave can be accessed on a periodic basis (e.g. one business day for 25 weeks).
111. Supporting partner leave can be taken at full pay or half pay (up to a total of 10 weeks at half pay), or a combination.
112. Applications for supporting partner leave must be accompanied by sufficient evidence to satisfy the Department that a birth or adoption will occur or has occurred.

Leave following a miscarriage, stillbirth or post-partum death of a child

113. An employee whose pregnancy ends earlier than 20 weeks before the expected date of the birth of their child (i.e. before 20 weeks' gestation) is entitled to:
 - a. unpaid special maternity leave in accordance with section 80 of the *Fair Work Act 2009* (FW Act) where they have a pregnancy-related illness, or their pregnancy ends after at least 12 weeks' gestation otherwise than by the birth of a living child and their child is not stillborn;
 - b. for an employee, other than a casual employee, two days of paid compassionate leave;
 - c. for an employee other than a casual employee, paid personal leave under clause 38; and
 - d. leave without pay under clause 49.
114. An employee, other than a casual employee, is entitled to two days of paid compassionate leave where their partner experiences a miscarriage.
115. An employee, other than a casual employee, is entitled to:
 - a. paid and unpaid leave in accordance with the *Maternity Leave (Commonwealth Employees) Act 1973*;
 - b. the additional four weeks of paid maternity leave under clause 46; and
 - c. three days of paid compassionate leavewhere their pregnancy ends within 20 weeks of the expected date of birth of their child (i.e. after at least 20 weeks' gestation), or their child is stillborn or dies post-partum following their pregnancy.
116. An employee, other than a casual employee, is entitled to:
 - a. supporting partner leave under clause 48; and
 - b. three days of paid compassionate leavewhere their child is stillborn or dies post-partum following their partner's pregnancy.
117. A casual employee is entitled to two days' unpaid compassionate leave in accordance with the FW Act where they experience a miscarriage, their child is stillborn or dies post-partum.

118. An employee who is entitled to unpaid parental leave in accordance with the FW Act where their child is stillborn, or their child dies during the 24-month period starting on the child's date of birth.
119. Subsection 77A(2) of the FW Act defines a stillborn child as a child who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks, and who has not breathed since delivery, and whose heart has not beaten since delivery.

Leave without pay

- ▶ Enterprise Agreement clause 49

120. An employing Member may approve leave without pay for reasons including, but not limited to:
- a. parental leave (as provided under the *Fair Work Act 2009*);
 - b. ceremonial leave; and
 - c. observance of religious holidays.
121. Leave without pay for ceremonial purposes may be granted to an employee of Aboriginal or Torres Strait Islander descent for ceremonial purposes connected with the death of a member of the immediate or extended family or for other ceremonial obligations under Aboriginal and Torres Strait Islander law.
122. In considering requests for leave without pay, an employing Member should take into account matters such as the reason for the request, the effect on the operations of the workplace, and the employee's length of service.
123. Leave without pay does not count as service for any purpose. However, leave without pay of any type (including the second half of a period of maternity leave at half pay), of 30 calendar days or less, in an accrual year does not affect the accrual of leave. Any unauthorised absence (an absence not covered by approved leave) of at least one day in an accrual year will affect the accrual of leave. Leave without pay may also affect eligibility for salary increments and retention payments in accordance with the Enterprise Agreement.
124. An application for leave without pay must state the reason for the leave.

Leave for cultural and/or ceremonial purposes

125. 'Immediate family' under clause 67 of Enterprise Agreement includes traditional kinship, where there is a relationship or obligation, under the customs and traditions of the community or group to which the employee belongs.
126. Employees that have cultural and/or ceremonial duties when an immediate family member or household member contracts or develops a personal illness that poses a

serious threat to his or her life, or sustains a personal injury that poses a serious threat to his or her life, may access a combination of:

- a. two days of paid compassionate leave in accordance with clause 40
- b. one day of paid miscellaneous leave
- c. other paid leave in accordance with the Enterprise Agreement (e.g. annual leave, personal leave)
- d. leave without pay under clause 49

where the paid compassionate and miscellaneous leave available is cumulative up to three days.

127. Employees that have cultural and/or ceremonial duties following the death of an immediate family member, household member or friend may access a combination of:

- a. three days of paid compassionate leave in accordance with clause 40
- b. one day of paid miscellaneous leave to attend a funeral
- c. two days of paid miscellaneous leave to undertake other duties, including those relating to Sorry Business or kinship responsibilities
- d. other paid leave in accordance with the Enterprise Agreement (e.g. annual leave, personal leave)
- e. leave without pay under clause 49

where the paid compassionate and miscellaneous leave available is cumulative up to six days.

Public holidays

- ▶ Enterprise Agreement clause 50
- ▶ [Dates of public holidays](#)

128. Employees who are temporarily working away from their work base observe any public holidays applicable to the temporary location and/or observe any public holidays at their work base which may occur during that period in accordance with clause 50.1 of the Enterprise Agreement.

129. No payment is made for public holidays occurring during leave without pay. However, employees will be paid for a public holiday where a period of leave without pay ceases prior to a public holiday (or consecutive public holidays) or where a period of leave without pay commences immediately after a public holiday. For the purposes of this paragraph, the public holidays from Christmas Day to New Year's Day inclusive are regarded as consecutive.

130. Public holidays during annual, personal or supporting partner leave are not deducted from leave credits.

131. Where an employee is absent on both the day before and the day after a public holiday, the public holiday is paid at the same rate as that of the leave. Where different rates of pay apply before and after the public holiday, the public holiday is paid at the higher rate (e.g. if absent on annual leave at half pay on the day before a public holiday and on leave without pay the day after the public holiday, then the public holiday is paid at half pay).
132. Casual employees are paid for the hours recorded on their casual employment agreement for a day that is a public holiday or annual closedown day. Casual employees are not paid for a day that is a public holiday or annual closedown day if that day is not recorded on their casual employment agreement.

Annual close down

- ▶ Enterprise Agreement clauses 50.2 and 50.3

133. An annual closedown on the business days that fall between Christmas Day and New Year's Day is available to eligible employees in accordance with clause 50.2 of the Enterprise Agreement.
134. Where an employee accesses paid time off for ordinary hours worked during the annual closedown in accordance with clause 50.3 of the Enterprise Agreement, the paid time off is taken at full pay and cannot equal more hours than the ordinary hours worked during the annual closedown. Employees are not required to submit a leave application in relation to this paid time off.