

Directive 05/20 - Paid Parental Leave Supporting Material

The Government's commitment

In September 2019, the Palaszczuk Government announced that the Government will be making changes to better support gender equity.

An initiative to ensure gender equitable access to the paid parental leave entitlement has been given effect via amendment of the Paid Parental Leave Directive (the Directive).

The Directive review

The Office of Industrial Relations undertook a review of the Directive on behalf of the Minister for Industrial Relations. The objective of the review was to provide gender equitable access to paid parental leave.

The Directive introduces the concept of 'long spousal leave' which is leave taken under this directive by an employee, whose spouse has given birth to a child, to enable the employee to be the primary caregiver for the child.

The amendments were limited in scope to only those changes necessary to achieve the objective. As a guide, previous policy positions and intent stand, with the changes focussed on the following parameters:

- The parent taking the long spousal leave is to be assuming the primary caregiver role;
- The 14 weeks paid maternity leave entitlement can be shared between the parents but must not exceed a total of 14 weeks in relation to the one birth event;
- An employee may access any of the maternity leave entitlement not used by that employee's spouse;
- Long spousal leave is paid at the absent employee's wage rate, not the highest caregiver's wage rate;
- To take leave the employee must have been eligible by the date of birth (i.e. 12 months service); and
- Long spousal leave must be taken prior to the child's first birthday.

A significant amount of feedback from sector agencies, payroll providers and unions contributed to the Directive amendments and this supporting document.

Implementation

Some common administrative matters that may arise with the changes to the Directive are addressed within this supporting material.

When does the revised Directive commence?

The revised Directive comes into effect from date of gazettal – 18 September 2020 and should be applied to relevant circumstances at that date.

The Directive is not retrospective. An employee cannot convert unpaid leave taken before the Directive commenced to paid long spousal leave.

Service or leave taken prior to the commencement of the Directive is to be taken into consideration for calculating entitlements under the revised Directive. Further, an employee may still be able to access long spousal leave for a birth that occurred prior to commencement of the revised Directive, if the employee meets the eligibility requirements.

How does the Directive interact with existing arrangements?

The Directive continues to be read in conjunction with the *Industrial Relations Act 2016* (IR Act) and the relevant award (see diagram on page 5), and any relevant Government and departmental policies as well as any risk mitigation strategies in relation to domestic and family violence.

For example, the protection provided by clause 21(c) of the *Queensland Public Service Officers and Other Employees Award – State 2015*, for a pregnant employee to commence (unpaid) maternity leave six weeks prior to the expected date of birth and remain on maternity leave until six weeks post birth, unless medically certified to do otherwise, continues to apply.

Except where otherwise defined, terms in the Directive are consistent with their meanings in the IR Act and *Acts Interpretation Act 1954*, for example:

- A reference to child includes children; and
- A reference to spouse includes defacto spouse (accordingly, a reference to former spouse includes former defacto spouse).

How is the entitlement administered to ensure the 14-week entitlement isn't exceeded?

Evidence satisfactory to the relevant Chief Executive is required to access an entitlement to long spousal leave. The primary method of evidence contemplated by the IR Act and the Directive is a statutory declaration. An agency may seek the employee's authority to confirm information about the primary caregiver role and leave taken by a public sector spouse by contacting the spouse's agency.

What evidence is required when making an application for paid maternity or long spousal leave?

For the **birth mother**, a medical certificate confirming the pregnancy and expected date of birth.

For the **spouse** applying for long spousal leave, a medical certificate confirming their spouse is pregnant and the expected date of birth, plus documentation such as a statutory declaration or other material to the satisfaction of the Chief Executive, stating the employee will be the primary caregiver for the relevant period of the long spousal leave applied for and the amount (if any) of the paid maternity leave entitlement used by the employee's spouse.

Any evidence provided should take into consideration that section 77 of the IR Act prohibits spouses from taking long parental leave at the same time.

Information an employee may be requested to provide to support an application for long spousal leave may include:

- Employee's name, payroll number and position;
- Whether the employee's spouse is a public service employee, and if so:
 - their spouses name and agency;
 - the amount of the Directive's 14 week paid maternity leave entitlement their spouse is taking;
 - a contact at their spouse's agency to confirm the balance of the 14 weeks not taken;
- In any case, the period and dates of any maternity leave (paid and unpaid) to be taken by the employee's spouse in relation to the child;
- The date the child is born;
- A statement that the employee will be the primary caregiver for the duration of the long spousal leave; and
- Any other documentary evidence the Chief Executive deems relevant.

Can long spousal leave be taken flexibly up to the child's first birthday, or must it be taken continuously?

Paid long spousal leave is aligned to the unpaid long birth-related leave entitlement under s59(2)(b) of the IR Act and as such should be taken as an unbroken period.

Can long spousal leave be taken concurrently with a partner who is also on long parental leave?

Paid maternity leave and long spousal leave are taken during periods of unpaid long parental (birth-related) leave under the IR Act. As section 77 of the IR Act does not permit an employee to take long parental leave when the employee's spouse is on long parental leave, the Directive does not permit an employee to take paid long spousal leave at the same time as paid maternity leave. It should be noted that the objective of the Directive review is to provide gender equitable access to the leave entitlement, not to disturb other long-established arrangements.

Short spousal leave continues to be able to be taken concurrently where their spouse is on long parental leave.

Does long spousal leave have to be the initial absence?

Paid maternity leave will remain as the initial absence for the birth mother, as the point at which the birth mother's eligibility is assessed. The spouse is not bound by this condition because their eligibility is determined by reference to the child's date of birth and long spousal leave can be taken at any point prior to the child's first birthday. Clause 9.1.6(c) of the Directive states *"The conditions to maternity leave apply to long spousal leave except the condition of initial absence."*

How does the Directive interact with the Federal Government's Paid Parental Leave?

The Directive does not deal with the Commonwealth Government's Paid Parental Leave Scheme. It is advised employees seek independent advice in relation to this aspect of their parental leave.

Example scenarios

The following scenarios illustrate how the Directive applies to circumstances likely to arise within the public service. They are provided for illustrative purposes and are only to be used as general guidance.

No.	Scenario	Application
1	<p>Kevin and Sarah are public service employees, both have met the qualifying period before the estimated date of confinement.</p> <p>Sarah commences paid maternity leave 3 weeks prior to birth and returns to work 6 weeks post birth (9 weeks at full pay).</p> <p>Kevin now assumes the role of primary caregiver.</p>	<p>Sarah's application for paid maternity leave is approved and is required to be her initial absence under the Directive.</p> <p>Kevin's entitlement is the balance of the paid maternity leave, a total of 5 weeks full pay to be taken as long spousal leave as provided for in the Directive while assuming the role of primary caregiver.</p>
2	<p>Julie works for the private sector and is entitled to 12 weeks paid parental leave from her employer.</p> <p>Steven has worked for the public service for 2 years.</p> <p>Steven wishes to take as much leave as possible when the baby is born.</p> <p>Julie intends to return to the workplace after exhausting her paid maternity leave.</p>	<p>Steven is entitled to 1 week short spousal leave that can be taken concurrently with Julie's maternity leave. If Julie is the primary caregiver, Steven cannot also take long spousal leave at the same time as only one parent may assume the role of primary caregiver at any one time.</p> <p>Once Julie returns to work, Steven can access the full 14 weeks long spousal leave, noting that it may be taken at half pay but must be taken prior to the child's first birthday.</p>
	In the above scenario, it makes no difference if Julie works for the private sector or is a public service employee who is not yet eligible for paid maternity leave (e.g. due to length of service).	

No.	Scenario	Application
3	Katie's wife is unemployed at the time of giving birth. Katie has worked in the public service for 3 years. Katie wishes to take long spousal leave.	Katie is entitled to 1 week short spousal leave as the initial absence on short-birth related leave; and provided Katie presents satisfactory evidence stating that she will be the primary caregiver for the child, she is entitled to 14 weeks paid long spousal leave, noting that it may be taken at half pay but must be taken prior to the child's first birthday.
4	<p>Anna is a public service employee who is a surrogate for Rick and Brian, who also work in the public service and are the intended parents.</p> <p>Rick will assume the role as primary caregiver once the baby is born.</p>	<p>Anna is entitled to 14 weeks paid maternity leave under the paid parental leave Directive.</p> <p>When Rick provides satisfactory evidence that he is the intended parent under a surrogacy arrangement and the primary caregiver he will be entitled to 14 weeks paid surrogacy leave.</p> <p>Brian may choose to apply for 1 week paid surrogacy leave as the secondary caregiver.</p>

Relationship between leave types under the IR Act and Directive

The below diagram represents conceptually the relationship between entitlements. For complete information about the relevant entitlements please refer to the IR Act and Directive.

