

## Division 8—Community service leave

### 108 Entitlement to be absent from employment for engaging in eligible community service activity

An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:

- (a) the period consists of one or more of the following:
  - (i) time when the employee engages in the activity;
  - (ii) reasonable travelling time associated with the activity;
  - (iii) reasonable rest time immediately following the activity; and
- (b) unless the activity is jury service—the employee’s absence is reasonable in all the circumstances.

### 109 Meaning of *eligible community service activity*

#### *General*

- (1) Each of the following is an ***eligible community service activity***:
  - (a) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - (b) a voluntary emergency management activity (see subsection (2)); or
  - (c) an activity prescribed in regulations made for the purpose of subsection (4).

#### *Voluntary emergency management activities*

- (2) An employee engages in a ***voluntary emergency management activity*** if, and only if:
  - (a) the employee engages in an activity that involves dealing with an emergency or natural disaster; and
  - (b) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
  - (c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
  - (d) either:
    - (i) the employee was requested by or on behalf of the body to engage in the activity; or
    - (ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (3) A ***recognised emergency management body*** is:
  - (a) a body, or part of a body, that has a role or function under a plan that:
    - (i) is for coping with emergencies and/or disasters; and
    - (ii) is prepared by the Commonwealth, a State or a Territory; or

- (b) a fire-fighting, civil defence or rescue body, or part of such a body; or
- (c) any other body, or part of a body, a substantial purpose of which involves:
  - (i) securing the safety of persons or animals in an emergency or natural disaster; or
  - (ii) protecting property in an emergency or natural disaster; or
  - (iii) otherwise responding to an emergency or natural disaster; or
- (d) a body, or part of a body, prescribed by the regulations;

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this Division.

*Regulations may prescribe other activities*

- (4) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity.

## **110 Notice and evidence requirements**

*Notice*

- (1) An employee who wants an absence from his or her employment to be covered by this Division must give his or her employer notice of the absence.
- (2) The notice:
  - (a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
  - (b) must advise the employer of the period, or expected period, of the absence.

*Evidence*

- (3) An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

*Compliance*

- (4) An employee's absence from his or her employment is not covered by this Division unless the employee complies with this section.

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

## **111 Payment to employees (other than casuals) on jury service**

*Application of this section*

- (1) This section applies if:
  - (a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and
  - (b) the employee is not a casual employee.

*Employee to be paid base rate of pay*

- (2) Subject to subsections (3), (4) and (5), the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

*Evidence*

- (3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
- (a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
  - (b) 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.

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

- (4) If, in accordance with subsection (3), the employer requires the employee to give the employer the evidence referred to in that subsection:
- (a) the employee is not entitled to payment under subsection (2) unless the employee provides the evidence; and
  - (b) if the employee provides the evidence—the amount payable to the employee under subsection (2) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

*Payment only required for first 10 days of absence*

- (5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
- (a) the employer is only required to pay the employee for the first 10 days of absence; and
  - (b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and
  - (c) the reference in subsection (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.

*Meaning of jury service pay*

- (6) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.

*Meaning of jury service summons*

- (7) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

## **112 State and Territory laws that are not excluded**

- (1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to engaging in eligible community service activities, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.

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|  | <p>Note: For example, this Act would not apply to the exclusion of a State or Territory law providing for a casual employee to be paid jury service pay.</p> |
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|  | <p>(2) If the community service activity is an activity prescribed in regulations made for the purpose of subsection 109(4), subsection (1) of this section has effect subject to any provision to the contrary in the regulations.</p> |
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