

72 The period of leave—members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee couple if each of the employees intends to take unpaid parental leave.

Leave must be taken in single continuous period

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

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

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

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

When birth-related leave must start

- (3) If the leave is birth-related leave other than flexible unpaid parental leave:
- (a) one employee's period of leave must start, in accordance with the following rules:
 - (i) if the employee is a female employee who is pregnant with, or gives birth to, the child—the period of leave may start up to 6 weeks before the expected date of birth of the child, or earlier if the employer and employee so agree, but must not start later than the date of birth of the child;
 - (ii) if subparagraph (i) does not apply—the period of leave must start on the date of birth of the child; and
 - (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

When adoption-related leave must start

- (4) If the leave is adoption-related leave other than flexible unpaid parental leave:
- (a) one employee's period of leave must start on the day of placement of the child; and
 - (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

Limited entitlement to take concurrent leave

- (5) If one of the employees takes a period (the **first employee's period of leave**) of unpaid parental leave in accordance with paragraph (3)(a) or

(4)(a), the other employee may take a period of unpaid parental leave (the *concurrent leave*) during the first employee's period of leave, if the concurrent leave complies with the following requirements:

- (a) the concurrent leave must not be longer than 8 weeks in total;
- (b) the concurrent leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than 2 weeks;
- (c) unless the employer agrees, the concurrent leave must not start before:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child.

(6) Concurrent leave taken by an employee:

- (a) is an exception to the rule in subsection (2) that the employee must take his or her leave in a single continuous period; and
- (b) is an exception to the rules in subsections (3) and (4) about when the employee's period of unpaid parental leave must start.

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

(7) To avoid doubt, if the other employee takes flexible unpaid parental leave during the first employee's period of leave, the other employee's leave is taken not to be concurrent leave.

Note: The combined effect of this subsection, paragraph (5)(a) and subsection 72A(9) is that members of an employee couple cannot take longer than 8 weeks of unpaid parental leave at the same time, whether the leave is taken under this section (including as concurrent leave) or as flexible unpaid parental leave.