

**DETERMINATION UNDER THE *TEACHING SERVICE ACT*
1980 DETERMINATION NO. 3 of 2023
LEAVE FOR TEACHERS EXPERIENCING DOMESTIC AND FAMILY
VIOLENCE**

I, Murat Dizdar, Secretary of the Department of Education make the following Determination pursuant to section 13 of the *Teaching Service Act* 1980.

1 Purpose

- 1.1 The purpose of this Determination is to provide paid leave for teachers experiencing domestic and family violence.

2 Application

- 2.1 This Determination will apply to all permanent, temporary and casual teachers employed in the Department, including non-school based teaching service staff.
- 2.2 This Determination rescinds and replaces *Determination No. 4 of 2012 Domestic Violence Leave*.

3 Definitions

- 3.1 ***Department*** means the Department of Education.
- 3.2 ***Determination 5 of 2016*** means *Determination 5 of 2016 under the Teaching Service Act 1980 – Family and Community Service Leave and Personal Carer’s Leave*.
- 3.3 ***Domestic violence*** is any behaviour in an intimate, family or domestic relationship, which is violent, threatening, coercive, controlling or causes a person to live in fear for their own or someone else’s safety. It may be a pattern of ongoing controlling or coercive behaviour.
- 3.3.1 An ***intimate relationship*** refers to people who are or have been in an intimate partnership, whether or not the relationship involves or has involved a sexual relationship, for example, married, engaged to be married, separated, divorced, de facto partners, couple promised to each other under cultural or religious tradition, or who are dating.
- 3.3.2 A ***family relationship*** has a broader definition and includes people who are related to another through blood,

marriage or de facto partnerships, adoption and fostering relationships, sibling, and extended family relationships. It includes the full range of kinship ties in Aboriginal and Torres Strait Islander communities, and extended family relationships. People living in the same house may also be in a domestic relationship if their relationships exhibit dynamics which may foster coercive and abusive behaviours.

3.3.3 Examples of behaviours that constitute domestic and family violence include but are not limited to:

3.3.3.1 physical and sexual violence;

3.3.3.2 verbal abuse;

3.3.3.3 emotional or psychological abuse;

3.3.3.4 stalking and intimidation;

3.3.3.5 technology facilitated abuse;

3.3.3.6 social and geographical isolation;

3.3.3.7 financial abuse;

3.3.3.8 cruelty to pets;

3.3.3.9 damage to property; or

3.3.3.10 threats to be violent in the above ways.

3.4 **Secretary** means the Secretary of the Department of Education.

3.5 **Teaching Service** means the Teaching Service of New South Wales.

3.6 **Teaching Service Act** means the *Teaching Service Act* 1980.

4 **Leave for Matters arising from Domestic and Family Violence**

4.1 The definition of domestic violence is in clause 3.3 of this determination.

4.2 Teachers, including casual teachers, are entitled to 20 days of paid

domestic and family violence leave in each calendar year. This leave is not cumulative.

- 4.3 Paid domestic and family violence leave is not pro-rata for part-time or casual teachers.
- 4.4 Teachers can take paid domestic and family violence leave in part-days, single days, or consecutive days. There is not a minimum number of hours that a teacher must take in a day.
- 4.5 Teachers experiencing domestic and family violence may take domestic and family violence leave including for the following purposes:
 - 4.5.1 seeking safe accommodation or establishing safety;
 - 4.5.2 attending medical, legal, police or counselling appointments relating to their experience of domestic and family violence;
 - 4.5.3 attending court and other legal proceedings relating to their experience of domestic and family violence;
 - 4.5.4 organising alternative care or education arrangements for their children or person(s) in their care;
 - 4.5.5 other activities that will help them to establish safety and recover from their experience of domestic and family violence; or
 - 4.5.6 any other purpose associated with the impact of experiencing domestic and family violence which is impractical to do outside of their normal hours of work.
- 4.6 Domestic and family violence leave does not need to be approved before it can be accessed. However, teachers should advise the Department of the need to take domestic and family violence leave as soon as possible.
- 4.7 The leave entitlement can be accessed without the need to exhaust other available leave entitlements first.
- 4.8 The Department should only require evidence of the occurrence of domestic and family violence in exceptional circumstances and principals/managers should use their discretion when assessing whether evidence is needed, and if so, what type of evidence.

4.9 Evidence of the occurrence of domestic and family violence may include:

4.9.1 a document issued by the police, a court, a domestic violence support service or a member of the legal profession;

4.9.2 a provisional, interim or final Apprehended Violence Order (AVO), Apprehended Domestic Violence Order (ADVO), certificate of conviction or family law injunction;

4.9.3 a medical certificate;

4.9.4 a statutory declaration by the teacher experiencing domestic and family violence; or

4.9.5 any other evidence that would satisfy a reasonable person that domestic and family violence has occurred.

4.10 Evidence provided by a teacher should be sighted and must be returned to the teacher. The evidence must not be retained by the Department or stored on the teacher's personnel file.

4.11 The intent of paid domestic and family violence leave is to provide teachers with the same remuneration as they would have received, inclusive of penalties that would have applied, if they did not take the leave.

4.11.1 Full-time and part-time teachers are entitled to be paid at their full rate of pay for the hours they would have worked had they not taken the leave.

4.11.2 Casual teachers will be paid at their full rate of pay for the hours they were rostered for and would have worked had they not taken the leave. For the purposes of this clause, "Rostered" means the Department has offered specific hours of work and the casual teacher has accepted that offer.

4.12 The Department must keep personal information about domestic and family violence (including information about support provided by the Department) confidential. This includes not recording instances of or information about domestic and family violence leave on:

4.12.1 payslips,

4.12.2 the teacher's personnel file, or

4.12.3 rosters.

4.13 Any information regarding a teacher's experience of domestic or family violence, including any domestic and family violence leave or supports provided (under this clause or otherwise), can only be accessed by senior HR personnel or, with the teacher's consent, a relevant senior manager.

4.14 The Department must not take adverse action against a teacher because they:

4.14.1 have experienced, or are experiencing, domestic and family violence;

4.14.2 use the paid domestic and family violence leave provisions; or

4.14.3 are a casual teacher who declines to take a shift they are not rostered for because they are attending to a matter connected with domestic and family violence at that time.

4.15 The Department will provide support to a teacher experiencing domestic and family violence, including but not limited to the provision of flexible working arrangements, including changing working times, work locations, telephone numbers and email addresses.

5 Leave for teachers providing support to people experiencing domestic and family violence

5.1 Teachers providing care and support to a member of their family or household experiencing domestic and family violence may, if the criteria is met, access existing leave entitlements under Determination 5 of 2016 including:

5.1.1 Family and Community Service Leave; or

5.1.2 Sick Leave to Care for Dependents.

5.2 The "family" or "household" member that the teacher is providing care and support to must meet the definition of these terms, as referred to in Determination 5 of 2016.

5.3 If the Department needs to establish the reasons for a teacher accessing existing leave entitlements under these provisions, the

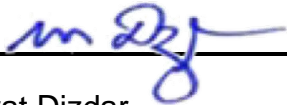
teacher may be required to provide evidence consistent with Determination 5 of 2016.

5.4 Evidence provided by a teacher should be sighted and must be returned to the teacher. The evidence must not be retained by the Department or stored on the teacher's personnel file.

6 Date of Effect

6.1 This Determination comes into effect from the date on which the Determination is made by the Secretary and will remain in force until rescinded or varied.

Signed:



Murat Dizdar
SECRETARY
DEPARTMENT OF EDUCATION

Date: 11 December 2023