

DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

DETERMINATION NO. 9 OF 2016

ADOPTION LEAVE

I, Mark Scott, Secretary of the Department of Education make the following determination pursuant to section 13 of the *Teaching Service Act 1980*.

1. Application

- 1.1 This determination rescinds and replaces Determination No. 3 of 2007 Adoption Leave.
- 1.2 This determination will apply to permanent and temporary school teachers and related employees.
- 1.3 This determination does not apply to casual teachers or teachers employed at the Saturday School of Community Languages.
- 1.4 Definitions

“Primary caregiver” means the person who assumes the principal role of providing care and attention to the child.

“Secretary” means the Secretary of the Department of Education.

“Department” means the Department of Education

“Continuous service” includes:

- all periods of paid leave, previous maternity, parental and adoption leave without pay, sick leave without pay, school vacations, public holidays and up to a total of five days leave without pay;
- full time and part time temporary service and full time casual service; and,
- previous service with another government department which merges with employment as a teacher.

In regards to temporary teachers, continuous service will also include:

- paid student vacations;
- unpaid student vacations that occur during a temporary engagement;
- unpaid student vacations that occur between engagements where there are temporary engagements abutting the beginning and end of the vacation;
- the four week period prior to the anticipated date of birth regardless of

whether a temporary engagement exists during this period or not.

While not included in the 40 weeks service, continuity of service will not be broken by:

- an absence of up to 21 calendar days at the beginning of the school year for temporary or casual teachers who were in service at the end of the preceding school year and are available for employment; or
- the period between early cessation of a temporary engagement and the end date of the original temporary engagement.

“Related employees” means education officers, senior education officers and principal education officers.

“Teacher” means permanent and temporary school teachers and related employees.

2. Adoption Leave

2.1 Entitlement and Payment

2.1.1 Unpaid Adoption Leave

All teachers who adopt a child and who are to be the primary caregiver of the child, are entitled to the following periods of unpaid adoption leave irrespective of their length of service (refer to 2.1.4 for paid leave where appropriate).

- a) For a period of up to 12 months on a full time basis if the child has not commenced school at the date of taking custody.
- b) For a period up to 12 months on a full time basis as the Secretary may determine if the child has commenced school at the date of taking custody.
- c) A teacher may take adoption leave as follows:
 - i) as a period of unpaid leave on a full time basis totalling 12 months; or
 - ii) as a period of unpaid leave on a part time basis totalling 24 months (12 months equivalent full time) at the discretion of the Department; or
 - iii) as a combination of full time and part time leave provided that the total period of adoption leave taken does not exceed the equivalent of twelve months full time leave.
- d) Accrued extended leave may be taken concurrently with unpaid or half

pay adoption leave. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with unpaid or half paid adoption leave.

- e) The period of 12 months in respect of full time adoption leave or 24 months in respect of part time adoption leave may be extended to the end of the school vacation which next occurs after the adoption leave expires. This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position

2.1.2 Right to Request

- a) A teacher entitled to adoption leave may request the Department to allow the teacher:
 - i) to extend the period of simultaneous adoption leave use up to a maximum of eight weeks;
 - ii) to extend the period of unpaid adoption leave for a further continuous period of leave not exceeding 12 months;
 - iii) to return from a period of adoption leave on a part-time basis until the child reaches school age;

to assist the teacher in reconciling work and parental responsibilities.

- b) The Department shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher's adoption responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Department's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- c) The teacher's request and the Department's decision made under 2.1.2 a)(ii) and 2.1.2 a)(iii) must be recorded in writing.
- d) Where a teacher wishes to make a request under 2.1.2 a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the teacher is due to return to work from adoption leave.

2.1.3 Communication During Adoption Leave

- a) Where a teacher is on adoption leave and a definite decision has been made to introduce significant change at the workplace, the Department shall take reasonable steps to:

- i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing adoption leave; and
 - ii) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing adoption leave.
- b) The teacher shall take reasonable steps to inform the Department about any significant matter that will affect the teacher's decision regarding the duration of adoption leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.
 - c) The teacher shall also notify the Department of changes of address or other contact details which might affect the Department's capacity to comply with 2.1.3 a).

2.1.4 Paid Adoption Leave

- a) Payment for adoption leave is available to teachers who are the primary caregiver subject to completion of 40 weeks continuous service prior to the anticipated date of taking custody of the child.
- b) Payment is made for a period not exceeding 14 weeks full time equivalent.
- c) Payment for temporary teachers is available subject to the completion of 40 weeks continuous service in the 2 years prior to the date of taking custody of the child. Paid adoption leave is only available to temporary teachers when the date of taking custody of the child falls within a period of a temporary engagement. If the temporary engagement ceases during paid adoption leave the remaining portion of the paid adoption leave will be paid as a gratuity.
- d) With the exception of higher duties allowance and locality allowance, all allowances will be paid to eligible teachers and related employees for the period of paid adoption leave. No allowances will be paid to teachers and related employees during periods of no pay adoption leave.

2.1.5 Method of Payment

- a) When completing an application for adoption leave a teacher may elect to be paid by normal fortnightly payments at full or half pay or by payment in a lump sum.
- b) A teacher may apply for one combination of leave at full and half pay.

- c) During the period of 24 months from the date of taking custody of the child, a teacher can access further paid adoption leave at their substantive FTE immediately prior to taking leave regardless of whether they are currently on full time or part time leave.

If adoption leave is extended beyond two years to the end of the next term the above position still applies.

- d) Where a teacher has taken 24 months of adoption leave, then proceeds on full time leave without pay, for the subsequent adoption during this period following the 24 months of adoption leave:
 - if the date of taking custody falls in the period up to and including 40 weeks following the conclusion of the initial adoption leave the subsequent adoption leave is paid at the teacher's substantive FTE immediately prior to taking leave;
 - if the date of taking custody falls outside 40 weeks following the conclusion of the initial adoption leave the subsequent adoption leave will be unpaid.
- e) Where a teacher has taken adoption leave, then accesses their right to request a return to work on a part time basis (until the child reaches school age), for any subsequent adoption leave:
 - the teacher is always paid at their substantive FTE immediately prior to taking leave regardless of the duration of the part time work.

2.2 Other Leave

2.2.1 Adoption leave commences on the date of taking custody of the child. Other leave as is necessary to attend to the domestic travel and residential arrangements associated with taking charge of the child may be taken prior to the commencement of the adoption leave.

2.2.2 Subject to an entitlement existing, a teacher may apply for family and community service leave, extended leave, or leave without pay for this purpose.

2.3 Application and Variation of Leave

2.3.1 An application for adoption leave, accompanied by documentation from the adoption authority indicating the anticipated date of taking custody, should be submitted at least one month prior to the anticipated date of taking custody of the child.

2.3.2 Where a teacher takes custody of the child earlier than expected, an application for leave should be submitted no later than 14 days after taking

custody of the child.

- 2.3.3 The first and last date of leave must be stated on the application.
- 2.3.4 A teacher may vary the intended period of leave any number of times before it commences.
- 2.3.5 After leave commences the period of leave may be varied once without approval and on any number of occasions with approval. However, resumption of duty must then coincide with the commencement of a school term.
- 2.3.6 Subject to approval, a teacher who has returned to full time duty after adoption leave, may, provided the teacher has a balance of adoption leave to credit, apply to revert to full time or part time adoption leave.

2.4 Right of Return

- 2.4.1 A permanent teacher's right of return to their substantive position is retained if the total period of adoption leave and any other leave is 24 months (or less).
- 2.4.2 A temporary teacher's right of return to their substantive position is retained if the total period of adoption leave and any other leave is 24 months (or less) and the temporary engagement is ongoing.
- 2.4.3 If a teacher takes a new period of adoption leave (ie: for a subsequent adoption) the right of return period starts again.
- 2.4.4 Except in the case of related employees working administrative hours, if the end of 24 months falls during a school term, adoption leave and any subsequent leave may be extended to the end of the next school vacation and right of return to the substantive position is retained.

2.5 Casual Teaching While on Adoption Leave

- 2.5.1 A teacher on unpaid adoption leave (including part time adoption leave without pay) or leave without pay following adoption leave may seek approval to work as a casual teacher while on such leave. No approval will be granted for a teacher to undertake casual teaching whilst on paid adoption leave.
- 2.5.2 Service as a casual teacher during leave without pay following adoption leave will count as service for incremental progression.
- 2.5.3 Service as a casual teacher will count as service for long service leave purposes except where the period of leave during which service is undertaken is itself creditable as service.

2.6 Part Time Adoption Leave

- 2.6.1 All teachers adopting a child who has not commenced school at the date of taking custody, and who are to be the primary caregiver of the child, may take adoption leave on a part time basis.
- 2.6.2 Applications for part time adoption leave for between one and four days per week may be approved over a period of up to two years subject to the leave not exceeding the maximum entitlement provided in 2.1.1 e).
- 2.6.3 During part time adoption leave the right of return to the teacher's substantive position is maintained.
- 2.6.4 Unless otherwise stated in this determination, the provisions of permanent part time employment will apply for all service undertaken during the period of part time adoption leave.
- 2.6.5 Accrued extended leave may be taken concurrently with part time adoption leave, provided the period of leave does not exceed the equivalent of 12 months full time. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with part time adoption leave.
- 2.6.6 An application for part time adoption leave should be submitted at least one month in advance of the date on which leave is to commence.
- 2.6.7 A teacher may make application to vary the period of part time adoption leave and/or work arrangements provided that sufficient adoption leave is available.
- 2.6.8 Subject to approval a teacher who has returned to full time duty after adoption leave may apply to revert to part time or full time adoption leave.
- 2.6.9 Similarly, a teacher who has returned to duty on a part time basis may apply to revert to full time adoption leave and vice-versa.

2.7 Service Credits for Adoption Leave

- 2.7.1 All periods of adoption leave, count as service for incremental purposes.
- 2.7.2 Adoption leave without pay does not count as service for extended leave, except when a teacher has completed at least ten years paid service, then any period of adoption leave without pay of less than six months counts for the accrual of extended leave.
- 2.7.3 Paid adoption leave counts as service in respect of all categories of leave including annual leave loading.
- 2.7.4 Except where provided at 2.7.2, unpaid adoption leave does not count as

service for any category of leave

2.7.5 Teachers eligible to be paid a locality or climatic allowance shall be paid on a pro rata basis to a full time teachers' entitlement, calculated on the number of days actually worked.

2.8 Other Employment

A teacher on part time adoption leave wishing to undertake outside employment, other than casual teaching in NSW government schools, must make application for approval in accordance with the Department's Code of Conduct and Private and Secondary Employment Policy.

2.9 Resignation

The position of a teacher who submits notice of resignation when proceeding on adoption leave will be declared vacant. Resignation in this instance will not be accepted earlier than the last day of the paid adoption leave nor later than the last day of approved leave.

2.10 Superannuation

A teacher on adoption leave whether paid or unpaid, is not required to meet any payment of the employers superannuation contributions to any NSW Government superannuation fund.

3. Date of Effect

3.1 The provisions of this Determination become effective from the date on which the Determination is made by the Secretary.

3.2 Implementation of the provisions of this Determination will be effected by administrative action at a future date to be determined in accordance with the Department's operational requirements.

3.3 Notwithstanding the provisions of sub-clause 3.1, the Department will continue to apply the provisions of the rescinded Determination 3 of 2007 until such time as the provisions of Determination 9 of 2016 are commenced by administrative action.

Signed:



Mark Scott
SECRETARY
DEPARTMENT OF EDUCATION

Date:

4 September 2016