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### 4.1 Leave provisions - general

The following sections contain policy and procedures on the leave entitlements of all teachers, permanent, temporary and casual, including full-time and part time teachers. Unless where specifically noted otherwise (eg Vacation Pay) these leave types also apply to Non School Based Teaching Service Staff. The information in this Chapter does not apply to teachers at the Saturday School of Community Languages.

#### Leave simplification

As part of the implementation of the SAP HR Payroll system changes were introduced to simplify how some teachers' leave types are calculated and, in some instances, to align leave types with the NSW Public Service.

The changes related mainly to the way leave is accrued and administered. Where an entitlement has changed it was assessed in the context of the full suite of changes to have little or no impact on teachers leave overall.

Key changes, effective from the implementation of the new payroll system, include:

- A five day per week remuneration model;
- A prospective accrual model for vacation pay;
- Vacations to be treated as a payment rather than a leave type, other than Annual Leave;
- The accrual rate for leave to be based on paid service and leave;
- Alignment of leave accrual rules for teachers with the Public Service for FACS and sick leave.

#### Applying for leave

Teachers should be aware that when applying for leave, the leave applied for must be stated in fractions of a day rather than hours.

When an absence involves part of a day, leave is granted for  $\frac{1}{4}$ ,  $\frac{1}{2}$  or  $\frac{3}{4}$  of a day, as appropriate. When calculating leave any period of up to and including:

- $1\frac{3}{4}$  hours is debited as one quarter of a day
- $3\frac{1}{2}$  hours is debited as one half of a day
- $5\frac{1}{4}$  hours is debited as three quarters of a day

For the purposes of leave calculations a full time day is seven hours for all permanent and temporary (full time and part time) teachers.

#### Employee Self Service (ESS)

Teachers should submit leave requests online using SAP ESS. Through ESS teachers can also review their leave history, check current leave balances and forecast future leave balances.

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### 4.2 Adoption, maternity, altruistic surrogacy and parental leave (including permanent out of home care placements)

#### 4.2.1 General

This section should be read in conjunction with the following determinations made under the *Teaching Service Act, 1980*:

- [Determination 7 of 2016 - Maternity Leave](#)
- [Determination 8 of 2016 - Parental Leave](#)
- [Determination 9 of 2016 - Adoption Leave](#)
- [Determination 5 of 2006 - Casual School Teachers - Adoption, Bereavement, Maternity, Parental and Personal Carer's Entitlements](#)

and the following determination made under the *Government Sector Employment Act 2013*:

- [Section 52 \(1\) Determination No 1 of 2018 – Parental Leave for employees in relation to Altruistic Surrogacy and Permanent Out of Home Care Arrangements](#)

Casual teachers may also access unpaid Parental Leave under the [Industrial Relations Act 1996](#).

In addition to the entitlements provided in this chapter, teachers may also access benefits under the [Commonwealth Paid Parental Leave Scheme](#).

#### 4.2.2 Definitions

“Anticipated date of birth” means a date specified by a medical practitioner to be the date on which the medical practitioner expects the teacher to give birth.

“Birth” shall include stillbirth except where otherwise stated.

“Continuous service” includes:

- all periods of paid leave, previous adoption, parental and maternity leave without pay, sick leave without pay, school vacations, public holidays and up to a total of five days leave without pay;
- all periods of maternity leave taken not more than 9 weeks prior to the anticipated date of birth;
- full time and part time temporary teaching service and full time casual teaching service; and,
- previous service with the Department, or another government department which merges with employment as a teacher.

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

- paid school vacations;
- unpaid school vacations that occur during a temporary engagement;
- unpaid school vacations that occur between engagements where there are temporary engagements abutting the beginning and the 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.

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“Primary caregiver” means the person who assumes the principal role of providing care and attention to the child. This role may be undertaken by the other partner should a change in circumstances arises.

### 4.2.3 Adoption, maternity and altruistic surrogacy leave

#### 4.2.3.1 Entitlement and payment

- a) The paid and/or unpaid adoption, maternity and altruistic surrogacy leave entitlements of eligible teachers are outlined in the table below:

Staff category	Entitlements	Service Requirements for Eligibility
<p>All permanent and temporary teachers who will be the primary caregiver of an adopted child</p> <p>All permanent and temporary teachers who are pregnant</p> <p>All permanent and temporary teachers who will be the primary caregiver of a child as a result of an altruistic surrogacy.</p>	<p>Basic entitlement</p> <p><b>Unpaid adoption, maternity and altruistic surrogacy leave</b> – 52 weeks unpaid leave from the date of birth or taking custody of the child. May be taken as full time and or part time leave providing the total amount of leave does not exceed the equivalent of 12 months full time leave.</p>	<p>No service requirement.</p>
<p>Temporary teachers may only access paid and/or unpaid adoption leave, maternity or altruistic surrogacy leave within a period of a temporary engagement. If the temporary engagement ceases during paid maternity leave, the remaining portion of the paid maternity leave will be paid as a gratuity.</p>	<p><b>Paid adoption, maternity and altruistic surrogacy leave</b> – 14 weeks full pay or 28 weeks half pay, or one combination of full pay and half pay. May be paid in a lump sum or in normal fortnightly pay.</p> <p>Paid leave reduces the amount of unpaid leave available.</p>	<p>At least 40 weeks' continuous service prior to the anticipated date of birth or date of taking custody.</p>
<p>All permanent and temporary teachers who have been granted adoption, maternity or altruistic surrogacy leave.</p> <p>Temporary teachers who have been granted adoption, maternity or altruistic surrogacy leave within a period of a temporary engagement.</p>	<p>Additional entitlements</p> <p><b>Right to request:</b></p> <ul style="list-style-type: none"> <li>to extend the period of unpaid adoption, maternity and altruistic surrogacy leave for an additional period not exceeding 12 months;</li> <li>to return from a period of adoption, maternity and altruistic surrogacy leave on a part time basis until the child reaches school age;</li> <li>to extend the period of simultaneous adoption, maternity or altruistic surrogacy leave up to 8 weeks when the teacher's partner is taking parental</li> </ul>	<p>No service requirement.</p>

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Staff category	Entitlements	Service Requirements for Eligibility
	leave.	
Casual teachers who become pregnant and have completed at least 40 weeks continuous service prior to the anticipated date of birth of the child.	<b>Maternity payment</b> – equivalent to 14 weeks’ pay at the same rate of the final week of service prior to ceasing duty for maternity purposes.	At least 40 weeks’ continuous service prior to the anticipated date of birth of the child. See 4.2.5.10 for details.
All Casual teachers who give birth or become the primary caregiver of a child through adoption or altruistic surrogacy.	<b>Unpaid adoption, maternity and altruistic surrogacy leave</b> – one week unpaid leave at the time of taking custody of the child.	No service requirement but must have employment at the time of taking the leave.

### 4.2.4 Adoption leave

#### 4.2.4.1 Conditions

The following conditions apply in relation to adoption leave entitlements:

- i) For the purpose of meeting the service requirements for paid adoption leave, the time of taking custody is on the receipt of an adoption order effected by the Supreme Court in accordance with the *Adoption Act 2000*.
- ii) Where both parents of the adopted child are employees of the Department only one parent (the primary caregiver) is eligible for adoption leave. The other parent may be eligible for parental leave (see Sections 4.2.7 for details).
- iii) A permanent teacher may extend the period of unpaid adoption leave until the end of a school term for the purpose of aligning the teacher’s return to work from unpaid adoption leave with the start of a following school term. This provision also applies to temporary teachers as long as the amended leave date is within the period of the temporary teacher engagement.
- iv) During the period of paid adoption leave teachers will receive all allowances for which they are eligible except higher duties allowance and locality allowance.
- v) Where the period of paid adoption leave includes a school vacation, the adoption leave will be broken around the vacation period. This means that the adoption leave will cease at the commencement of a vacation period and the teacher will be paid their vacation accrual. Debiting of the teacher’s adoption leave entitlement will recommence after the vacation period and will continue until the teacher has been paid the total of 14 weeks full pay (or 28 weeks half pay) adoption leave.
- vi) When adoption leave is taken at full pay, other leave types (such as sick leave) will accrue at full pay. Adoption leave taken at full pay will also accrue full vacation pay.
- vii) When adoption leave is taken at half pay, other leave types will accrue at half pay. Adoption leave taken at half pay will also only accrue vacation pay at half the normal rate.
- viii) When unpaid adoption leave is taken, other leave types will not accrue. The

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exception to this is where a teacher has completed at least 10 years paid service and the unpaid adoption leave is less than 6 months, then extended leave will continue to accrue. Unpaid adoption leave will accrue no vacation payment.

### 4.2.4.2 Other leave

Subject to an entitlement existing, a teacher may apply for family and community service leave, extended leave or leave without pay to attend to the domestic, travel and residential arrangements associated with taking custody of the child. Such leave may be taken prior to the commencement of the adoption leave.

### 4.2.5 Maternity leave

#### 4.2.5.1 Conditions

The following conditions apply in relation to maternity leave entitlements:

- i) Maternity leave is only available to eligible female teachers. Where the other parent is also an employee of the Department of Education, they may be eligible for parental leave (see Section 4.2.7).
- ii) A permanent teacher may extend the period of unpaid maternity leave until the end of a school term for the purpose of aligning the teacher's return to work from unpaid maternity leave with the start of the following school term. This provision also applies to temporary teachers as long as the amended leave date is within the period of the temporary teacher engagement.
- iii) During the period of paid maternity leave teachers will receive all allowances, except higher duties allowance and locality allowance, to which they are eligible.
- iv) A teacher who is pregnant may take maternity leave for a period of up to 9 weeks prior to the anticipated date of birth. The 9 weeks is in addition to the 12 months of maternity leave to which the teacher is entitled.
- v) When a temporary teacher's engagement ends within the 9 week period prior to the anticipated date of birth, any maternity leave payment made during that period will cease upon the ending of the temporary engagement.
- vi) Teachers may apply to take unpaid maternity leave earlier than 9 weeks prior to the anticipated date of birth. Such applications may be approved on a case by case basis. This section should be read with Section 4.2.9.8(d).
- vii) Maternity leave will commence no later than the anticipated date of birth. Where the date of birth falls within a vacation period maternity leave will commence from the first day of the new school term. This section should be read with Section 4.2.5.9.
- viii) Where the period of paid maternity leave includes a school vacation, the maternity leave will be broken around the vacation period. This means that the maternity leave will cease at the commencement of a vacation period and the teacher will be paid their vacation accrual. Debiting of the teacher's maternity leave will recommence after the vacation period and will continue until the teacher has been paid the total of 14 weeks full pay (or 28 weeks half pay).
- ix) When maternity leave is taken at full pay, other leave types (such as sick leave) will accrue at full pay. Maternity leave taken at full pay will also accrue full pay vacations.
- x) When maternity leave is taken at half pay, other leave types will accrue at half pay.

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Maternity leave taken at half pay will also only accrue vacation pay at half the usual rate.

- xi) When unpaid maternity leave is taken, other leave types will not accrue. The exception to this is where a teacher has completed at least 10 years paid service and the unpaid maternity leave is less than 6 months, then extended leave will continue to accrue. Unpaid maternity leave will accrue no vacation payment.
- xii) Maternity leave is also available to a female teacher who is acting as a surrogate (the birth mother) and who has entered into a surrogacy arrangement in accordance with the provisions of the NSW *Surrogacy Act 2010*.

### 4.2.5.2 Transfer to a safe job

Where a teacher's present work is, specifically because of pregnancy or breastfeeding, a risk to her health and safety or to that of her unborn child:

- a) the teacher's working conditions or hours of work are to be temporarily adjusted to avoid exposure to the risk; or
- b) where the above adjustment is not possible or cannot reasonably be made, the teacher is to be temporarily transferred to other appropriate work that will avoid exposure to the risk and is, as nearly as possible, comparable in status and pay to that of her present work; or
- c) where the above transfer is not possible or cannot reasonably be made, the teacher is to be granted:
  - i) unpaid maternity leave for as long as a medical practitioner certifies it to be necessary to avoid exposure to the risk. This applies regardless of whether the teacher has exhausted her unpaid maternity leave entitlement under Section 4.2.3.1; or
  - ii) paid sick leave as the teacher is entitled to, and for as long as a medical practitioner certifies to be necessary to avoid exposure to the risk.

Teachers seeking to access this entitlement must provide a medical certificate specifying the nature of the risk and the modifications required to control this risk.

### 4.2.5.3 Miscarriage

Where a teacher suffers a miscarriage she will be granted sick leave or unpaid maternity leave for as long as a medical practitioner certifies to be necessary.

### 4.2.5.4 Stillbirth

Where a teacher gives birth to a still born child she shall have the option of taking paid or unpaid sick leave or paid or unpaid maternity leave subject to an entitlement existing. In the case of a stillbirth, a teacher will not be eligible to request the additional options provided in section 4.2.9.3.

### 4.2.5.5 Premature birth

Where a teacher gives birth prior to the anticipated date of birth, maternity leave will commence on the actual date of birth if maternity leave has not already commenced. Where a teacher gives birth during the vacation period and maternity leave has not commenced, maternity leave will commence on the first day of the next school term. Where the maternity leave has already commenced the leave terms will not be varied.

### 4.2.5.6 Notification of birth

As soon as feasible after the birth, a teacher should send a copy of the child's birth certificate to the Department. A teacher may elect to provide an extract of the birth certificate indicating the details of the

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mother and child only.

### 4.2.5.7 Other leave in conjunction with maternity leave

- a) A teacher may use available sick leave with pay, sick leave without pay, family and community service leave or extended leave if, because of a complication associated with the pregnancy, including a history of miscarriage or other illnesses the teacher is unable to continue to work. An application made under this section must be supported with a medical certificate and will not affect right of return. (See Section 4.2.9.8)
- b) Sick leave to credit may be granted until the anticipated date of birth on which date maternity leave will commence.

### 4.2.5.8 Absent on other leave

If a teacher is absent on leave without pay and applies for maternity leave but does not resume duty, paid maternity leave may be granted as follows:

- If the anticipated date of birth is within 40 weeks of the commencement of the full time leave without pay, maternity leave is paid at the substantive full time equivalent that applied immediately prior to taking leave.
- If the anticipated date of birth is more than 40 weeks after the commencement of full time leave without pay the maternity leave is unpaid.
- If the anticipated date of birth is more than 40 weeks after the commencement of part time leave without pay the maternity leave will be paid at the part time rate.

If a teacher is on leave without pay for personal reasons and the anticipated date of birth is to occur prior to the expiry date of the leave, then from the date the teacher advises of her pregnancy, the remainder of the approved leave without pay or a period of 12 months, whichever is less, will not be debited against a teacher's total entitlement for leave without pay for personal reasons.

### 4.2.5.9 Subsequent pregnancy while on maternity leave

Where a female staff member becomes pregnant whilst on maternity leave, a further period of maternity leave shall be granted if requested. Whether leave will be paid or unpaid will depend on the completion of the 40 weeks qualifying period (see sections 4.2.3.1 and 4.2.9.4)

If the female staff member enters on the second period of maternity leave during the currency of the initial period of maternity leave, then any residual maternity leave from that initial entitlement ceases. In this instance, the right of return is retained for another 24 months from the date of birth – see section 4.2.9.8.

### 4.2.5.10 Maternity payment for casual teachers

- a) Eligibility
  - Casual teachers who become pregnant and have completed at least 40 weeks continuous service prior to the anticipated date of birth of the child may qualify for a maternity payment.
- b) Service requirements
  - The 40 weeks' continuous service includes the following:
    - All periods of paid leave
    - Unpaid adoption, maternity and parental leave
    - Unpaid sick leave
    - School vacations and public holidays
    - Up to five days leave without pay



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- Full time and part time permanent and temporary service
- Full time casual service
- The following periods are not counted towards the 40 weeks continuous service but they do not break the continuity of service:
  - Any absence from duty for a period, or periods of leave without pay, which exceeds a total accumulated period of five days.
  - An absence of a casual teacher from full time service at the beginning of the school year, who was in full time employment at the end of the preceding school year, and although available for full time employment, is not employed on a full time basis before the 21<sup>st</sup> calendar day of the school year.
  - A casual teacher who is not employed for a period of up to four weeks prior to the anticipated date of birth will have this period deemed as continuous service for the purpose of eligibility for maternity payments.
- c) Payment
  - Eligible casual teachers will receive a maternity payment equivalent to 14 weeks' pay at the same rate of the final week of service prior to ceasing duty for maternity purposes.
  - Casual teachers who qualify for payment in lieu of maternity leave will be paid in a lump sum.
- d) Right of return to former position
  - A casual teacher does not have a right of return to any position previously occupied.

### 4.2.6 Altruistic surrogacy leave

Altruistic surrogacy leave is available to teachers who are able to demonstrate they are the parent of a child as follows:

- Intended parent(s) are to notify the Department at least four (4) months before the expected birth and provide a copy of the pre-conception surrogacy agreement, as provided for under the *Surrogacy Act 2010* (redacted as necessary to protect the privacy of non-employees);
- At the time of assuming the role of primary or secondary carer the teacher is to provide a statutory declaration advising that they are now the primary or secondary carer of the child and intend to make application for a parentage order as required under the *Surrogacy Act 2010*;
- A copy of the parentage order application (redacted as necessary) is provided as soon as practicable after it is lodged; and
- A copy of the parentage order (redacted as necessary) is provided as soon as practicable after it is granted.

#### 4.2.6.1 Conditions

The following conditions apply in relation to altruistic surrogacy leave entitlements:

- i. Where both parents of the child are employees of the Department only one parent (the primary caregiver) is eligible for altruistic surrogacy leave. The other parent may be eligible for parental leave (see Sections 4.2.7 for details). A permanent teacher may extend the period of unpaid altruistic surrogacy leave until the end of a school term for the purpose of aligning the teacher's return to work from unpaid altruistic surrogacy leave with the start of the following school term. This provision also applies to temporary teachers as long as the amended leave date is within the period of the temporary teacher engagement.

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- ii. During the period of paid altruistic surrogacy leave teachers will receive all allowances for which they are eligible except higher duties allowance and locality allowance.
- iii. Where the period of paid altruistic surrogacy leave includes a school vacation, the altruistic surrogacy leave will be broken around the vacation period. This means that the altruistic surrogacy leave will cease at the commencement of a vacation period and the teacher will be paid their vacation accrual. Debiting of the teacher's altruistic surrogacy leave will recommence after the vacation period and will continue until the teacher has been paid the total of 14 weeks full pay (or 28 weeks half pay) altruistic surrogacy leave.
- iv. When altruistic surrogacy leave is taken at full pay, other leave types (such as sick leave) will accrue at full pay. Altruistic surrogacy leave taken at full pay will also accrue full vacations pay.
- v. When altruistic surrogacy leave is taken at half pay, other leave types will accrue at half pay. Altruistic surrogacy leave taken at half pay will also only accrue vacation pay at half the usual rate.
- vi. When unpaid altruistic surrogacy leave is taken, other leave types will not accrue. The exception to this is where a teacher has completed at least 10 years paid service and the unpaid altruistic surrogacy leave is less than 6 months, then extended leave will continue to accrue. Unpaid altruistic surrogacy leave will accrue no vacation payment.

### 4.2.6.2 Other Leave

Subject to an entitlement existing, a teacher may apply for family and community service leave, extended leave or leave without pay to attend to the domestic, travel and residential arrangements associated with taking custody of the child. Such leave may be taken prior to the commencement of the altruistic surrogacy leave.

### 4.2.7 Parental leave

#### 4.2.7.1 Entitlement and payment

- a) The paid and/or unpaid parental leave entitlements of eligible teachers are outlined in the table below. See Section 4.2.8 for Permanent out of home care placements.

Staff Category	Entitlements	Service Requirements for Eligibility
All permanent and temporary teachers who become parents following a birth, adoption or altruistic surrogacy but are not eligible for maternity, adoption or altruistic surrogacy leave.	Basic entitlement  <b>Unpaid parental leave</b> – A period of up to 52 weeks leave from the actual date of birth or custody. May be taken as full time and or part time leave providing the total amount of leave does not exceed the equivalent of 12 months full time leave.	No service requirement.
A temporary teacher may only access paid and/or unpaid parental leave within a period of a temporary engagement.	<b>Paid parental leave</b> – One week full pay or two weeks half pay. Must be taken in a continuous block. Cannot be taken as individual days. Must be taken within the first 12 months following the date of birth or taking custody of the child.	At least 40 weeks' continuous service prior to the anticipated date of birth or taking custody.

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Staff Category	Entitlements	Service Requirements for Eligibility
	Paid leave reduces the amount of unpaid leave available.	
<p>All permanent teachers who have been granted parental leave.</p> <p>All temporary teachers who have been granted parental leave may only access such options within a period of temporary engagement.</p>	<p>Additional entitlements</p> <p><b>Right to request:</b></p> <ul style="list-style-type: none"> <li>• to extend the period of unpaid parental leave for an additional period not exceeding 12 months;</li> <li>• to return from a period of parental leave on a part time basis until the child reaches school age.</li> <li>• to extend the period of simultaneous adoption, maternity or altruistic surrogacy leave to up to 8 weeks when the teacher's partner is taking parental leave.</li> </ul>	No service requirement.
Casual teachers who become parents following a birth, adoption or altruistic surrogacy but are not eligible for maternity, adoption or altruistic surrogacy leave.	<b>Unpaid parental leave</b> – one week unpaid leave at the time of the birth of the child.	No service requirement but must have employment at the time of taking the leave.

b) The following conditions apply in relation to parental leave entitlements:

- i) A permanent teacher may extend the period of unpaid parental leave until the end of a school term for the purpose of aligning the teacher's return to work from unpaid parental leave with the start of the following school term. This provision also applies to temporary teachers as long as the amended leave date is within the period of the temporary teacher engagement.
- ii) During the period of paid parental leave teachers will receive all allowances to which they are eligible, except higher duties allowance and locality allowances.
- iii) Where the period of paid parental leave includes a school vacation, the paid parental leave will be broken around the vacation period. This means that the paid parental leave will cease at the commencement of a vacation period and the teacher will be paid their vacation accrual. Debiting of the teacher's paid parental leave will recommence after the vacation period and will continue until the teacher has been paid the total of 1 week full pay (or 2 weeks half pay) paid parental leave.
- iv) When paid parental leave is taken at full pay, other leave types (such as sick leave) will accrue at full pay. Parental leave taken at full pay will also accrue full vacation pay.
- v) When paid parental leave is taken at half pay, other leave types will accrue at half pay. Paid parental leave taken at half pay will also only accrue vacation pay at half the normal rate.
- vi) Parental leave may not be taken earlier than the actual date of birth or in the case

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of adoption or permanent out of home care placements, the date of taking custody of the child.

- vii) Unpaid parental leave applied for but not commenced will be cancelled in cases of miscarriage or stillbirth. A teacher may use available FACS leave, extended leave or leave without pay in these circumstances.

### 4.2.8 Permanent out of home care placements

Permanent out of home care placements provide children who cannot safely live with their parents with a stable and secure placement that promotes their safety, wellness and wellbeing. These placements can include foster care and kinship arrangements. Typically the child is placed with an individual(s) who has been deemed to be their permanent carer, with a view to adoption. It must be noted that although it is likely that adoption of the child will occur at some point in time, adoption leave is not available to a teacher until such time as an adoption order has been granted by the Supreme Court.

The provisions for permanent out of home care placements are the same as the unpaid parental leave provisions, including the right to request provisions. There is, however, no entitlement to the one (1) week full pay or two (2) weeks half pay paid parental leave when entering into a permanent out of home care arrangement.

#### 4.2.8.1 Entitlement

- a) The unpaid parental leave entitlements relating to permanent out of home care placements are outlined in the table below:

Staff category	Entitlements	Service Requirements for Eligibility
<p>All permanent and temporary teachers who will be carers of a child based on the provision of a guardianship or a permanent placement order.</p> <p>Temporary teachers may only access this leave within a period of a temporary engagement.</p>	<p><b>Unpaid leave for permanent caring arrangements</b> – 52 weeks unpaid leave from the date the child is in the permanent care of the teacher. May be taken as full time and or part time leave providing the total amount of leave does not exceed the equivalent of 12 months full time leave.</p>	No service requirement.
	<p>Additional entitlements</p> <p><b>Right to request:</b></p> <ul style="list-style-type: none"> <li>to extend the period of unpaid leave for an additional period not exceeding 12 months;</li> <li>to return from a period of unpaid leave on a part time basis until the child reaches school age.</li> </ul>	

- b) The following conditions apply in relation to the above entitlements:

- i. A permanent teacher may extend the period of unpaid parental leave until the end of a

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school term for the purpose of aligning the teacher's return to work from unpaid parental leave with the start of the following school term. This provision also applies to temporary teachers as long as the amended leave date is within the period of the temporary teacher engagement.

- ii. Unpaid parental leave may not be taken earlier than when the teacher receives a permanent placement order.
- iii. In the event that a teacher and their partner, who is also a teacher, are both named on the permanent placement order, only one teacher can access unpaid parental leave at any one time.

### 4.2.9 General conditions

The provisions below apply to adoption, maternity, altruistic surrogacy, parental leave and permanent out of home care placements, except as otherwise provided.

#### 4.2.9.1 Departmental responsibilities

- a) On becoming aware that a teacher or the teacher's spouse or partner is pregnant, is entering into an altruistic surrogacy arrangement, is entering into a permanent out of home care placement or that a teacher is adopting a child, the teacher's principal is to advise the teacher to contact EConnect HR Shared Services for advice on possible entitlements and obligations under these procedures (including the return to work provisions in Section 4.2.9.8)

- b) Discrimination

No teacher can be discriminated against because:

- the teacher or the teacher's spouse or partner is pregnant or has given birth to a child; or
- the teacher or the teacher's spouse or partner has applied to adopt a child or has adopted a child; or
- the teacher or the teacher's spouse or partner has entered into an altruistic surrogacy arrangement; or
- the teacher or the teacher's spouse or partner has applied to be a permanent out of home carer or has been declared to be a permanent out of home carer; or
- the teacher has applied for, or is absent, on adoption leave, maternity leave, altruistic surrogacy leave or parental leave.

- c) Communication while on leave

Where a teacher is on adoption, maternity, altruistic surrogacy or parental leave and a definite decision has been made to introduce significant change at the workplace (for example a workplace restructure), the Department shall take reasonable steps to:

- 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 leave; and
- 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 leave.

Generally, communication for school based staff will be facilitated by school principals.

#### 4.2.9.2 Teachers' responsibilities

- a) Application for leave

At least one month (excluding school vacations) prior to the proposed first day of leave, a teacher who

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is intending to take adoption, maternity, altruistic surrogacy or parental leave must submit to the principal or their nominee:

- i) an application via the Department's SAP employee self service for the full period of all paid and unpaid leave to be taken;
  - ii) a medical certificate which includes anticipated date of birth or, documentation from the relevant authority indicating the expected date of taking custody; and
  - iii) where the application includes a period of paid leave and unpaid leave the teacher must specify dates of leave required at full pay, half pay and no pay, along with any other leave (eg extended leave) to be taken in conjunction with maternity or related leave via a single leave request.
  - iv) Where a teacher wishes to receive their paid leave as a lump sum payment in advance, a separate request for a lump sum payment must be made to EDConnect HR Shared Services after the leave request has been approved. Requests can be made by contacting EDConnect by phone or via an online query.  
  
NB: While one month's notice is the minimum, up to three months' notice is advisable particularly where lump sum payment in advance is requested.
  - v) A teacher may wish to request additional maternity leave under section 4.2.9.3 at the time of applying for maternity leave.
- b) Variation of leave
- i) A teacher may vary the intended period of leave any number of times before it commences.
  - ii) After leave commences the period of leave may be varied once without prior approval and on any number of subsequent occasions with approval. However resumption of duty must then coincide with the commencement of a school term. In all cases, a teacher must provide at least four weeks' notice during term time by submitting an amended leave request to the principal or their nominee.
  - iii) Subject to approval, a teacher who has returned to duty after leave, may, provided the teacher has a balance of adoption, maternity, altruistic surrogacy or parental leave to credit, apply to revert to full time or part time adoption, maternity, altruistic surrogacy or parental leave.
- c) Communication while on leave
- i) A teacher must take all reasonable steps to inform the Department about any significant matter that will affect the teacher's decision regarding the duration of 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.
  - ii) A teacher shall also notify the Department of changes of address or other contact details which might affect the Department's ability to comply with Section 4.2.9.1(c).
- d) Resumption of duty
- One month during term time prior to the date on which a teacher is due to resume duty, they must either confirm in writing that they will be resuming duty, or apply for an extension of leave, or if resigning, submit notice of separation.

### 4.2.9.3 Right to request

The following provisions are in addition to the basic entitlement provided in sections 4.2.3.1 and 4.2.7.1. They apply to permanent or temporary teachers who take or who are on adoption, maternity, altruistic

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surrogacy or parental leave. For temporary teachers, these options are only available during a temporary engagement. At the expiration of a temporary engagement future part time work arrangements will require separate negotiations with the principal.

- a) A teacher entitled to adoption, maternity, altruistic surrogacy or parental leave may request the Department to allow the teacher:
  - i) to extend the period of simultaneous maternity, altruistic surrogacy and adoption leave use up to a maximum of eight weeks (To be read in conjunction with [Determination No.8 of 2016 Parental Leave](#));
  - ii) to extend the period of unpaid adoption, maternity, altruistic surrogacy or parental leave for a further continuous period of leave not exceeding 12 months;
  - iii) to return from a period of adoption, maternity, altruistic surrogacy or parental 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 parental 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) Where a teacher wishes to make a request under this section, such a request must be made as soon as possible but no less than 7 weeks prior to the date upon which the teacher is due to return to work from leave. Teachers are encouraged to apply for access to all entitlements under this section at the time of making their original application for adoption, maternity, altruistic surrogacy or parental leave.
- d) The teacher's request should be submitted via the Department's SAP employee self service. In certain circumstances teachers may be asked to provide details supporting their request under this provision. In such cases, the teacher's request and the Department's decision under this section must be recorded in writing.
- e) Where a teacher has resumed duty after a period of leave, an application may be made under this section and will be subject to consideration on a case by case basis.

### 4.2.9.4 Determining payments

- a) Subject to 4.2.9.4(b), eligible permanent and temporary teachers are paid their normal salary during paid adoption, maternity, altruistic surrogacy and parental leave.
- b) Subject to the completion of 40 weeks of continuous service:
  - i) During the period of 24 months from the date of birth of a child, a pregnant teacher can access further paid maternity leave at their substantive pre pregnancy rate regardless of whether they are currently on full time or part time leave.  
  
If maternity leave is extended beyond two years to the end of the next term the above provision still applies.  
  
If a teacher takes a new period of maternity leave (ie: for a subsequent pregnancy) the right of return period starts again.
  - ii) Under section 2.1.3 of Determination No.7 of 2016 Maternity Leave, teachers can access maternity leave earlier than nine weeks prior to the anticipated date of birth.
  - iii) A pregnant teacher can access further paid maternity leave without having to return to duty even if the anticipated date of birth is outside the maternity leave.

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- iv) Where a teacher has taken 24 months of maternity or adoption leave, then proceeds on full time maternity leave without pay for a subsequent pregnancy or adoption during this period following the 24 months of maternity or adoption leave:
- if the anticipated date of birth of the child or the date of taking custody falls in the period up to and including 40 weeks, following the conclusion of the initial maternity or adoption leave the subsequent maternity or adoption leave is paid at the teacher's substantive FTE immediately prior to taking leave;
  - if the anticipated date of birth of the child or the date of taking custody falls outside 40 weeks following the conclusion of the initial maternity or adoption leave the subsequent maternity or adoption leave will be unpaid.
- v) Where a teacher has taken maternity 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 maternity leave, the teacher is always paid at their substantive FTE immediately prior to taking the leave regardless of the duration of the part time work.

### 4.2.9.5 Accessing other forms of leave

- a) Eligible teachers may combine adoption, maternity, altruistic surrogacy or parental leave with extended leave.
- b) Teachers may not access other forms of leave during periods of full time adoption, maternity, altruistic surrogacy or parental leave.
- c) See also Sections 4.2.5.3 (Miscarriage), 4.2.5.4 (Stillbirth), 4.2.5.5 (Premature Birth) and 4.2.5.7 (Other Leave in Conjunction with Maternity Leave).

### 4.2.9.6 Pre-natal Classes

Leave without pay or extended leave to credit may be granted to attend pre-natal classes. In exceptional circumstances, where classes are not available outside school hours, available family and community service leave may be granted.

### 4.2.9.7 Casual or temporary teaching while on leave

- a) The provisions of section 4.11.4 –Teaching with the Department on Leave Without Pay and 4.11.5 – Other Employment while on Leave Without Pay shall apply to teachers seeking to undertake teaching while on unpaid adoption, maternity, altruistic surrogacy or parental leave.
- b) Teachers on paid leave (full or half pay) are not eligible to work in any capacity.

### 4.2.9.8 Right of return

- a) A permanent teacher's right of return to their substantive position is retained if they resume duty 24 months (or earlier) after the actual date of birth of the child, or in the case of adoption and parental leave if the total period of adoption/parental leave and any other leave is 24 months or less.
- b) If the end of the 24 month period falls during a school term, adoption, maternity, altruistic surrogacy or parental leave and any subsequent leave may be extended to the end of the next student vacation and right of return to the substantive position is retained. This provision does not apply to non school based teaching service staff, except when the staff member is returning to a school based position. E.g. A non school based teaching service staff member takes 24 months maternity leave and is due to return to their role in November. The staff member is due to finish their non school based appointment and return to their school based position from the beginning of term one. The teacher may extend their maternity to the end of the term 4 vacation period, rather than resuming their non school based role from November to January.



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- c) If a teacher takes a new period of maternity leave (i.e: for a subsequent pregnancy) the right of return period starts again.
- d) An application to take maternity leave earlier than 9 weeks prior to the anticipated date of birth will not extend the right of return. A teacher applying to take such leave will retain a right of return to her substantive position for a total period of 24 months and 9 weeks from the date her maternity leave commences.

### 4.2.9.9 Superannuation

A teacher accessing the basic or additional adoption, maternity, altruistic surrogacy or parental leave entitlements, whether paid or unpaid, is not required to meet any payment of the employer's superannuation contributions to any NSW government superannuation fund. The employer will continue to meet any payment of the employer's superannuation contributions where applicable.

There are various options available for employee contributions while on part time maternity leave. Employees should contact their superannuation fund to discuss further. Should an employee wish to vary their own contributions they are advised to contact EDConnect prior to the commencement of the leave period

### 4.2.9.10 Part time adoption, maternity or parental leave

#### a) Eligibility

All teachers who are eligible for adoption, maternity, altruistic surrogacy or parental leave may take leave on a part time basis.

#### b) Application and Variation of Leave

- i) An application for part time adoption, maternity, altruistic surrogacy or parental leave should be submitted at least four weeks during term time in advance of the date on which leave is to commence.
- ii) Applications for part time adoption, maternity, altruistic surrogacy or parental 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/basic entitlement provided in 4.2.3.1, 4.2.7.1 or as appropriate.
- iii) A teacher may make application to vary the period of part time leave and/or work arrangements provided that sufficient adoption, maternity, altruistic surrogacy or parental leave is available. Such arrangements are subject to the operational requirements of the school, and should apply from the start of a school term.
- iv) Subject to approval, a teacher who has returned to full time or substantive hours of duty after adoption, maternity, altruistic surrogacy or parental leave may apply to revert to part time or full time adoption, maternity, altruistic surrogacy or parental leave.
- v) Similarly, a teacher who has returned to duty on a part time basis may apply to revert to full time adoption, maternity, altruistic surrogacy or parental leave and vice-versa.

#### c) Duration of leave

- i) The maximum period of the basic entitlement to part time adoption, maternity, altruistic surrogacy or parental leave which may be taken is 24 months from the date of birth or taking custody. If this date falls during a term, leave may be extended to the end of the vacation which next occurs after the child's second birthday. This provision does not apply to non school based teaching service staff, except when such a staff member is returning to a school based position.

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- ii) Subject to the maximum period stated in i) above, the actual period of part time adoption, maternity, altruistic surrogacy or parental leave that a teacher may take will be determined by:
- the period of untaken full time adoption, maternity, altruistic surrogacy or parental leave; and
  - the number of days per week that the teacher works.
- iii) Permanent teachers also have the right to request to return to work on a part time basis until the child reaches school age. See Section 4.2.9.3.

d) Right of Return

A permanent teacher on part time adoption, maternity, altruistic surrogacy or parental leave without pay will have right of return to their substantive position for the duration of the period of leave.

e) Salary

- i) The salary for teachers on part time adoption, maternity, altruistic surrogacy or parental leave is calculated in accordance with the following formula:

$$\frac{\text{Appropriate annual salary}}{52.17857} \times \frac{\text{No of days worked on a part-time basis}}{\text{No of days worked on a full time basis}} = \text{Weekly salary}$$

- ii) Allowances which are paid in recognition of duties undertaken during the part time leave arrangements are calculated in a similar manner.
- iii) 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.

f) Leave conditions

- i) Annual leave loading

Teachers on part time adoption, maternity, altruistic surrogacy or parental leave are eligible for annual leave loading on a pro rata basis.

- ii) Leave without pay

Teachers on part time adoption, maternity, altruistic surrogacy or parental leave may be granted short periods of leave without pay but if a teacher requires an extended period of leave without pay the part time adoption, maternity, altruistic surrogacy or parental leave must be terminated.

- iii) The following leave may be taken under normal conditions and will accrue on a pro rata basis :

- Extended leave (See Section 4.7)
- Sick leave (See Section 4.13)
- Special leave (See Section 4.14)
- Family and community service leave (See Section 4.8)

Vacation pay entitlements will continue to accrue for days worked under the part time work arrangement (see Section 4.3).

g) Other employment

A teacher on part time adoption, maternity, altruistic surrogacy or parental leave wishing to undertake outside employment, other than casual teaching in NSW government schools, must

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make application for approval in accordance with the Department's Code of Conduct and Private and Secondary Employment Policy. Approval will not be granted to take up a teaching position with a NSW private or independent school.

### 4.2.9.11 Resignation

- a) The position of a permanent teacher who submits notice of resignation when proceeding on adoption, maternity, altruistic surrogacy or paternity leave will be declared vacant. Resignation in this instance will not be accepted earlier than the last day of the paid leave and not later than the last day of approved leave.
- b) Prior to submitting notice of resignation, consideration should be given to all other alternatives that may be available dependent on the teacher's length of service and leave credits. These could include:
  - Leave without pay for personal reasons
  - Part time leave without pay
  - Part time maternity leave
  - Permanent part time work

See Chapter 11, Separation from the Service for additional information.

### 4.2.9.12 Service credits for adoption, maternity, altruistic surrogacy and parental leave

- a) Adoption, maternity, altruistic surrogacy and parental leave does not count as part of the probationary period for confirmation of a teacher's permanent appointment.
- b) All periods of adoption, maternity, altruistic surrogacy and parental leave, both paid and unpaid, count as service for incremental purposes.
- c) Adoption, maternity, altruistic surrogacy and parental leave without pay does not count as service for extended leave, except when a teacher has completed at least ten (10) years paid service, then any period of adoption, maternity, altruistic surrogacy and parental leave without pay of less than six (6) months counts for the accrual of extended leave.
- d) Paid adoption, maternity, altruistic surrogacy and parental leave counts as service for annual leave loading purposes.
- e) Full pay adoption, maternity, altruistic surrogacy and parental leave accrues full vacation pay and full leave entitlements. Half pay adoption, maternity, altruistic surrogacy and parental leave accrues half vacation pay and half pay entitlements. Unpaid adoption, maternity, altruistic surrogacy and parental leave will accrue no vacation pay and will accrue no leave entitlements.
- f) These service credits apply equally to adoption, maternity, altruistic surrogacy and parental leave and any additional leave approved under right to request provisions.

### 4.2.9.13 Parental leave for casual teachers under the *Industrial Relations Act 1996*

The *Industrial Relations Act 1996* provides an entitlement of 52 weeks unpaid parental leave to regular casual employees. Regular casual employees are those casual employees who work on a regular and systematic basis and who have a reasonable expectation of ongoing employment on that basis.

To be entitled to Parental Leave under the *Industrial Relations Act 1996* casual employees must have had at least 12 months continuous service with the Department as a regular casual employee. In this case regular casual employment is defined as being work on an unbroken regular and systematic basis (including any period of authorised leave of absence). A casual teacher meeting this requirement is likely to be eligible for a maternity payment (see 4.2.3.1).

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### 4.3 Annual leave and payments for non-attendance during non-term weeks

Source of Authority: [Determination 6 of 2016 - Annual Leave and Payment for Non-Attendance by Teachers in Non Term Weeks](#)

Note: Teachers in Non School Based Teaching Service positions do not receive Annual Leave and payment for non-attendance in term weeks under these provisions, but instead receive Recreation Leave in line with the NSW Public Service. See 4.3.5.

#### 4.3.1 Entitlement

##### 4.3.1.1 Annual leave

- a) Permanent full time teachers shall be granted four (4) calendar weeks annual leave per school year. Permanent full time teachers in the Western Vacation Division shall be granted five (5) calendar weeks annual leave per school year.
- b) Annual leave for teachers in the Eastern Vacation Division shall be taken during the first calendar non term week of the summer, autumn, winter and spring student vacations.
- c) Annual leave for teachers in the Western Vacation Division shall be taken during the first non-term calendar week of the autumn, winter and spring student vacations and during the first two (2) calendar non term weeks of the summer student vacation.
- d) Permanent part time and temporary teachers shall be entitled to annual leave on a pro rata proportion of the entitlement of a permanent full time teacher

##### 4.3.1.2 Non-attendance during non-term weeks

- a) Unless otherwise required by the employer, teachers shall not be required to attend their workplaces during the non-term week(s) of the student vacation periods.
- b) Teachers will continue to be paid for the non-term week(s), as appropriate under this section
- c) Any payments made to a teacher during non-term week(s) are not defined as and are not treated as payments for "leave" of any form.

##### 4.3.2.3 Formula for calculation of entitlements

- a) Subject to clause 4.14.6 and sub clause b) of this clause, and in lieu of the provisions of the Annual Holidays Act, a teacher shall during a school year be paid for annual leave and for non-term week(s) proportional to service during the school year in accordance with the following formula:

$$N = \frac{S}{T} \times C$$

Where

- "N" is the number of paid non term days the teacher has accrued at that time;  
"S" is the number of days of service during the school year;  
"T" is the number of teaching days during the school year in the Eastern and Western Vacation Division as appropriate; and  
"C" is the number of student vacation days in the Eastern or Western Vacation Division as appropriate.

- b) Notwithstanding the provisions of clause a):
  - i) Where upon the occurrence of any student vacation, a teacher is, by reason of subclause a) not entitled to be paid for the whole or any part of the non-term week(s), the teacher's pay shall be adjusted accordingly.

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- ii) Where at the commencement of a student vacation a teacher has an accrued entitlement in accordance with subclause a) in excess of the length of that student vacation the teacher shall be paid only for the period of the non-term week(s). When there is an accrued entitlement in excess of the length of the student vacation, the excess entitlement will be carried over for payment in the Term 4 vacation.
- c) A teacher who is transferred:
  - i) from the Eastern Vacation Division to a school in the Western Vacation Division is entitled to be paid for the last week of the Western Vacation Division summer student vacation, regardless of whether the teacher otherwise has an entitlement to payment for a period of non-term week(s) for the summer vacation;
  - ii) from the Western Vacation Division to a school in the Eastern Vacation Division is entitled to be paid for the non-term week(s) of the summer vacation as though the teacher had been appointed at all material times to a school in the Eastern Vacation Division.
- d) Upon the retirement or resignation of a teacher, or any other termination of that teacher's services, other than for willful misconduct, the teacher shall be paid any entitlement under subclause a) which has not already been paid to the teacher during that school year. In calculating this entitlement, the last day of service will be the date of resignation, retirement or termination.

### 4.3.3 Workers compensation payments during periods of annual leave and during weeks of non-attendance in non-term weeks

- a) Teachers receiving workers compensation payments will receive payments for annual leave in accordance with this section and workers compensation payments as determined by the Department's Fund Manager in accordance with the Workers Compensation Act, for the period of annual leave that occurs during the non-term periods of the year.
- b) Teachers receiving workers compensation payments will receive payments for the non-term week(s) as determined by the Department's Fund Manager in accordance with the Workers Compensation Act, in accordance with the definition of ordinary pay at clause 2.6 of [Determination 6 of 2016 - Annual Leave and Payment for Non-Attendance by Teachers in Non Term Weeks](#).

### 4.3.4 Effect of leave

#### 4.3.4.1 General

For the purpose of calculating the entitlements of annual leave and payment during non-term weeks, service will be counted as follows:

- a) those working days or the proportion of any working day when a teacher is on approved leave on full ordinary pay will accrue full vacation pay and full leave entitlements;
- b) those working days or the proportion of any working day when a teacher is on approved half pay will accrue half pay vacation and half pay entitlements; and
- c) those working days or the proportion of any working day when a teacher is on approved no pay will accrue no pay vacation and no leave entitlements

In relation to how service will be counted, the following exceptions apply:

- d) up to twenty (20) teaching days taken as sick leave without pay will count as service for the purpose of calculating vacation pay; and
- e) an equivalent of five (5) days or less approved leave without pay during any school year will count as service for the purpose of calculating vacation pay.

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- f) Those working days a teacher is absent on workers compensation.
- g) Periods of study leave falling on working day(s) or part thereof granted on:
  - i) half pay to a teacher with at least five years continuous service to permit the teacher to complete the final year of a degree course;
  - ii) full pay for traveling and attendance at lectures to a teacher who is undertaking a part-time university course;
  - iii) full pay to a teacher who is undertaking a part-time tertiary course to pursue course segments not available outside teaching hours; or
  - iv) full pay to a teacher undertaking a course which leads to an increase in status and/or salary, to travel to and attend compulsory residential course requirements involving field excursions/work, case study, study visits, practical work etc.

### 4.3.5 Non school based teaching service positions

- a) Teachers in full time non school based teaching service (NSBTS) positions shall be granted four (4) calendar weeks Recreation Leave per school year. Permanent full time NSBTS in the Western Vacation Division shall be granted five (5) calendar weeks annual leave per school year.
- b) Teachers in part time NSBTS positions shall be entitled to recreation leave on a pro rata proportion of the entitlement of a permanent full time teacher.
- c) Teachers moving in and out of NSBTS roles will have vacation pay accrue against the teaching position and recreation leave accrue against the NSBTS position.
- d) This means that a teacher who moves into a NSBTS position during the school year will retain any accrued vacation entitlement to be paid in the next vacation period after they return to their teaching position; or as a lump sum at the end of the Term 4 vacation if they do not return to their school based position. NSBTS will commence accruing recreation leave in the usual way from entry on duty in a non-school based position.
- e) Conversely, prior to a teacher returning to a school based position from a NSBTS position it is expected that they will exhaust their recreation leave entitlement. If this is not possible there is a process for approving the cashing out of any remaining recreation leave arising from the NSBTS position. Upon return to the school based role the teacher will accrue vacation entitlements based on the service they undertake in the school based position.

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### 4.4 Annual leave loading

#### 4.4.1 General

- a) When proceeding on annual leave, NSW government employees receive a special loading in addition to their normal salary.
- b) In the case of teachers, payment of annual leave loading is determined based on the teacher's accrued annual leave. For teachers in the Western Division, annual leave loading is calculated based on their accrued leave, up to a maximum of four weeks.

#### 4.4.2 Eligibility and entitlement

- a) Teachers who complete twelve months continuous service as at 30 November are entitled to an annual leave loading equivalent to 17½% of four weeks normal salary, provided that payment cannot exceed the loading calculated on the maximum salary for a Clerk, Grade 12 in the public service.
- b) In the case of teachers with less than twelve months service as at 30 November, entitlement is calculated on a pro rata basis.

#### 4.4.3 Effect of leave on entitlement

- a) Full pay leave and all workers' compensation leave count as full service and accrue annual leave loading.
- b) Leave on half pay will only accrue annual leave loading for half the total number of days of absence e.g. if a teacher takes 40 days extended leave on half pay only twenty days will accrue annual leave loading.
- c) All categories of leave without pay and unauthorised absences will not count as service and do not accrue annual leave loading.
- d) Teachers who have an annual leave loading entitlement, take leave without pay during a school year and have established an entitlement to vacation pay in the midsummer vacation, are entitled to pro rata payment for annual leave loading. Payment will be made as soon as possible after 30 November in the year in which the entitlement falls due.
- e) Teachers on temporary release to outside bodies are entitled to a pro rata payment based on service with this Department. Any balance of the leave loading is payable by the outside body.

#### 4.4.4 Calculation and payment

- a) For the purpose of calculating annual leave loading, the leave year commences on 1 December of each year and ends on 30 November of the following year.
- b) Payment, based on a teacher's salary rate as at 1 December is automatically paid as early as practicable in December each year.
- c) With the exemption of the allowances listed in d) below, all allowances which are paid to a teacher on 1 December are included in the salary rate.
- d) The following allowances do not attract annual leave loading:
  - climatic and disability allowances;
  - Lord Howe Island allowance;
  - principals' expense allowance;
  - incentive based allowances

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- relieving allowance - except where the allowance is being paid at 30 November and has been paid for the preceding twelve months, or a teacher is appointed to relieve in a position for a whole school year. A whole school year is regarded for the purposes of this section as referring to the period from January to December in a year.

### 4.4.5 Broken service

Broken service does not attract annual leave loading. If a teacher resigns and is subsequently re-employed during the same year, only the service from date of re-employment is recognised for annual leave loading purposes.

### 4.4.6 Payment on resignation or retirement

- a) Where the effective date of resignation or retirement is on or after 1 December, teachers are eligible for payment of annual leave loading based on service up until 30 November.
- b) No pro rata payment is made where the effective date of resignation or retirement is prior to 1 December.



### 4.5 Deferred salary scheme

- a) The deferred salary scheme is a five year scheme whereby participants electing to join the scheme will defer part of their salary for the first four years of the scheme and will be paid the deferred salary in the fifth year (the deferred salary leave year).
- b) The purpose of the scheme is to allow participants to take a year away from their position in the Department for professional development and renewal experiences such as industry experience, post graduate study, working in overseas education systems or other activities.
- c) The deferred salary scheme applies to permanent teachers. Temporary and casual school teachers are not eligible to join the scheme.
- d) The Deferred Salary Scheme Procedure can be accessed on the Department's intranet site at:  
<https://education.nsw.gov.au/content/dam/main-education/about-us/jobs-and-opportunities/media/documents/deferredsalary.pdf>.

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### 4.6 Domestic and family violence leave

#### 4.6.1 General

- a) From 1 January, 2019, ten (10) days paid domestic and family violence leave is available to permanent and temporary teachers in line with NSW Treasury's Section 52 (1) [Determination No 3 of 2018](#).
- b) Domestic and family violence leave is non-cumulative and can be taken in part days, single days or consecutive days. It can be taken without the need to exhaust other leave entitlements first.
- c) The leave can be used by employees who are experiencing domestic and family violence, for purposes including:
  - seeking safe accommodation;
  - attending medical, legal, police or counselling appointments relating to their experience of domestic and family violence;
  - attending court and other legal proceedings relating to their experience of domestic and family violence;
  - organising alternative care or making education arrangements for their children; or
  - any other purpose approved by the manager.

#### 4.6.2 Evidence and declaration

- a) Teachers applying for this leave need to provide their principal or manager with relevant evidence in support of the application, including, but not limited to:
  - a provisional, interim or final Apprehended Violence Order (AVO);
  - a certificate of conviction;
  - a family law injunction;
  - a medical certificate; or
  - an agreed document issued by the Police Force, a court, a domestic violence support service or a member of the legal profession.
- b) Any documentation provided for this purpose will be treated confidentially. Any documentation sighted by the principal should be returned to the teacher unless the teacher requests otherwise.
- c) Principals/managers are required to complete and submit a declaration in support of a teacher's leave application. See Tab B of Industrial Relations Circular [IRC 19/01](#).

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### 4.7 Extended leave and long service leave

#### 4.7.1 Extended leave - general

While the term ‘long service leave’ has been commonly used in the teaching service, permanent and temporary teachers receive extended leave in accordance with Part 4, Division 5 of the *Teaching Service Act 1980* and Determination 6 of 2006. Long Service Leave as provided by the *Long Service Leave Act 1955* is only available to casual teachers. Teachers who work in either a permanent or temporary role and in a casual capacity may have both an extended leave and long service leave entitlement dependent on their service. Refer to section 4.7.19 for long Service Leave.

With the 2018 rollout of the SAP HR Payroll system, changes have been made to the accrual of extended leave and long service leave. In addition to this handbook chapter, further information can be found in the [Leave Simplification Factsheet – Extended Leave and Long Service Leave for Teachers](#).

#### 4.7.2 Extended leave accrual

The accrual of extended leave is calculated on working days that is Monday to Friday. This is a change from the long standing practice of extended leave accruing in calendar days that included weekends.

The new accrual rate is:

- a) 44 working days for 10 years of service. Extended leave is accessible on a pro-rata basis after 7 years of service;
- b) 11 working days per year after 10 years of service;
- c) Pro rata accrual for periods of part time work, including work under a part time leave without pay arrangement.

Permanent part time teachers, part time temporary teachers and teachers on part time leave are eligible for extended leave on the same basis as that of full time teachers however the entitlement is calculated and paid on a pro-rata basis.

For more details see the tables of extended leave accrual at section 4.7.18.

#### 4.7.3 Taking extended leave

Employees are entitled to take extended leave after the completion of seven years’ service in accordance with the following provisions.

- a) The minimum period of extended leave that may be taken is half a day.
- b) Extended leave is calculated on a five day week basis.
- c) Except as outlined in e) below, when extended leave is taken during service, leave commences from the first working day of absence and expires on the day before resumption of duty.
- d) In the case of a part time teacher the extended leave continues until the day prior to the next working day of the part time program.
- e) If a period of extended leave is taken immediately prior to a school vacation, extended leave expires on the last day of term.
- f) Public holidays that fall whilst a teacher is on a period of extended leave will be paid and not debited from a teacher’s leave entitlement.
- g) Extended leave will not be granted on a part time basis.
- h) Teachers are eligible to take a combination of leave without pay and extended leave. The

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extended leave must precede the leave without pay except in the case where the leave is being taken prior to resignation or retirement. Irrespective of teachers' entitlements, they do not have to exhaust accrued extended leave prior to the commencement of leave without pay.

### 4.7.4 Double pay extended leave

- a) A teacher with an entitlement to extended leave may elect to take leave at double pay. The additional payment will be made as a taxable allowance payable for the period of the absence from work. The teacher's leave balance will be debited for the actual period of the absence from work and an equivalent number of days as are necessary to pay the allowance will be deducted.
- b) The allowance is not superable for members of the closed NSW public sector superannuation schemes: the State Superannuation Scheme and the State Authorities Superannuation Scheme.  
  
The allowance is superable for members of First State Super or another complying fund of their choice.
- c) Other leave entitlements and service benefits will accrue at the single time rate where a teacher takes extended leave at double pay.
- d) Where a teacher elects to take extended leave at double pay, a minimum period of one week should be taken.
- e) Public holidays that fall during a period of double pay extended leave will not be debited from a teacher's leave entitlement. An additional leave day will be debited to fund the allowance.
- f) Double pay extended leave may only be combined with another form of unpaid leave.

### 4.7.5 Applications for extended leave

- a) Applications for extended leave should be submitted at least three (3) months in advance. Teachers seeking to proceed on leave on day 1 of term 1 are to submit their leave application at least three (3) months prior to the end of the school year.
- b) Should special circumstances arise such as compassionate or other good reason, shorter notice may be accepted.
- c) There are no restrictions as to when a period of extended leave may be taken but prior to submitting an application for leave, teachers should exercise their professional judgement with regard to the impact of such leave on the students in the school.
- d) In exercising their professional judgement, teachers should also consider the educational and other advantages including vacation pay entitlements, in taking extended leave for a whole school term or terms.
- e) If the period for which leave has been applied is not convenient to the school because of reasons such as staffing difficulties, educational programs and student needs, then a mutually convenient time may be negotiated between the principal and the teacher. The personal circumstances of the teacher will also be a relevant factor in negotiating an alternative period of leave.
- f) Extended leave accrued between five (5) and seven (7) years cannot be taken as leave. The monetary value of this leave may be paid on resignation or termination of services depending upon the reason (see sections 4.7.14 and 4.7.15).

**NOTE: Teachers must check that extended leave applications have been approved prior to making any financial commitments.**

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### 4.7.6 Employment while on extended leave

Teachers are not permitted to undertake paid employment (including temporary or casual employment) whilst on extended leave with the exception of:

- educational employment while interstate or overseas; or
- cases where the Department determines approval is appropriate and alternate arrangements cannot be negotiated.

### 4.7.7 Payment of salary while on extended leave

- a) Extended leave may be taken on full, half or double pay or as a combination thereof after completion of seven or more years of paid service.
- b) Extended leave on half pay will only accrue vacation pay and entitlements at half the normal rate.
- c) Extended leave on double pay accrues vacation pay and entitlements at the normal, single time, rate.
- d) Teachers approved extended leave may request to be paid in advance for those pay days occurring during a period of extended leave. Although vacations are not debited as extended leave, where extended leave is taken immediately before or after, or spans a student vacation, and payment in advance is requested, pay in advance is also made for those pay days that fall within the vacation period.
- e) Requests for payment in advance for leave must be made to EDConnect HR Shared Services by phone or via an online query, after the teachers leave request is approved by their principal or line manager.
- f) Where the leave spans a financial year, the teacher may request to be paid in two lump sums. In this case one payment will be made at the commencement of the leave and a further payment made in the first pay period in the following financial year.

### 4.7.8 Payment of allowances while on extended leave

- a) Subject to d) below, annual allowances specified in the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2017* are payable while on extended leave.
- b) A principal's expense allowance is payable while on extended leave.
- c) Where the conditions of section 1.5.2.5 (b) are met, payment of a higher duties allowance is limited to an aggregate period of 21 days in any period of twelve (12) months.
- d) Locality allowances paid under the provisions of the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2017* are not payable while on extended leave.
- e) Living, disability and travelling allowances are not payable while on extended leave.
- f) Allowances which are paid on a daily basis are not payable while on extended leave.
- g) Where an employee takes double pay extended leave any allowances will be paid at the single rate only.

### 4.7.9 Effect of leave without pay on extended leave

- a) Except for the circumstances outlined in c) below, prior to the completion of ten (10) years paid service, leave without pay does not count as service for extended leave purposes.

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- b) On completion of ten years paid service, leave without pay counts as service under the following conditions:
- any period of leave without pay taken prior to 13 December 1963;
  - any period of leave without pay (including maternity, adoption, altruistic surrogacy and parental leave without pay) not exceeding six (6) months taken after 13 December 1963.
- c) Irrespective of a teacher's length of service, absences without pay count as service for extended leave purposes in the following circumstances:
- periods of sick leave without pay not exceeding six months;
  - periods during which workers' compensation is being paid by the Fund Manager;
  - absences due to major interruptions to public transport;
  - absences without pay for military purposes.
- d) Unauthorised absences do not count as service for extended leave purposes irrespective of a teacher's length of service.

### 4.7.10 Right of return

- a) Teachers will have a right of return to their school following a period of extended leave.
- b) Right of return may be affected if extended leave is combined with another form of leave, depending on the type of leave and the length of absence. For example, where a teacher takes extended leave and then immediately proceeds on leave without pay for three years then they will lose right of return to their substantive position.

### 4.7.11 Extended leave in conjunction with other leave

- a) Where a teacher has exhausted their family and community service leave entitlement or requires further leave in compassionate circumstances, a teacher may apply to take accrued extended leave.
- b) Teachers wishing to have a period of half or no pay leave followed with extended leave should indicate this when making the application for leave.

### 4.7.12 Sickness while on extended leave

- a) A teacher who becomes ill while on extended leave and who has sick leave to credit, may apply to have the extended leave recredited. To be eligible for a recredit of extended leave the teacher must have been ill for a period of at least five (5) continuous working days during the extended leave.
- b) An application under this clause must be accompanied by a medical certificate stating the nature and duration of the illness.
- c) This provision applies to teachers on extended leave prior to retirement. It does not apply to teachers on extended leave prior to resignation or termination of services.
- d) A teacher's vacation entitlement will not be reduced in situations where the whole or part of a period of extended leave is recredited to sick leave and the leave would not otherwise have incurred a reduction in vacation entitlement.

Sickness while on extended leave is the only circumstance in which extended leave will be recredited.

### 4.7.13 Vacation pay entitlement

#### 4.7.13.1 General

- a) Vacation pay entitlements for teachers are determined in accordance with the provisions of

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### [Determination 6 of 2016 - Annual Leave and Payment for Non-Attendance by Teachers in Non Term Weeks.](#)

#### 4.7.13.2 Effect of extended leave on half pay

- a) Where extended leave is taken on half pay it will attract half pay vacations and half pay leave entitlements.

#### 4.7.14 Payment on resignation or retirement

- a) Teachers who resign, retire or whose services are terminated, having completed seven (7) years paid service, are paid the monetary value of any extended leave balance.
- b) Where a teacher who has not completed seven (7) years actual service but has completed seven (7) consecutive school years' service, resigns or retires for any reason, payment of the monetary value of proportionate extended leave will be granted provided:
- the teacher has not been granted leave without pay and/or taken unauthorised absence;
  - the non-completion of ten (10) years actual service is due to the differential dates in the commencement of the school year.
- c) Where the services of a teacher with at least five (5) years' service but less than seven (7) years' service are terminated by the Secretary for any reason other than the teacher's serious and wilful misconduct, payment of the monetary value of proportionate extended leave on the basis of 1 month for five year service is made.
- d) Teachers with at least five (5) years but less than seven (7) years' service and who retire or resign ON account of illness, incapacity or domestic or other pressing necessity, are paid the monetary value of any proportionate amount of leave on full pay accrued on the basis of 1 month leave for 5 years' service. Pressing necessity may include marriage, family responsibilities or the impending birth of a child.
- e) Teachers with less than seven (7) years' service should indicate the reason for leaving the service in the appropriate space on the separation form so that full consideration may be given to whether they are entitled to a proportionate payment of extended leave.
- f) If a teacher is eligible for payment of extended leave on resignation or retirement, it is not necessary to apply for their entitlement as it is automatically calculated and is deposited in the same account to which salary is normally paid.
- g) Where a teacher is resigning to accept employment with a NSW government department the teacher should indicate on the separation form whether they wish for payment to be made for extended leave or for their accrued extended leave entitlement to be transferred to their new employer.

#### 4.7.15 Payment in the event of death

- a) Where a teacher who is eligible for extended leave, dies before taking such leave or while on leave, the monetary value of leave for which payment has not already been made will be paid to:
- the spouse of the deceased teacher or if none;
  - the children of the deceased teacher or if none;
  - any eligible dependent relative of the deceased teacher or if none;
  - the personal representative of the deceased teacher (ie the estate).
- b) These provisions also apply to a teacher who dies after completing more than five (5) years paid service but less than seven (7) years of service.

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### 4.7.16 Extended leave prior to resignation or retirement

- a) Teachers who take extended leave immediately prior to resignation or retirement can indicate whether or not they are going to relinquish their position from the commencement of the period of leave. An appropriate election should be made with the application for leave.
- b) While it is not compulsory to relinquish a position, in these circumstances it will assist the school in respect of staffing.

### 4.7.17 Recognition of prior service

#### 4.7.17.1 Recognition of NSW government service

- a) The following periods of service shall be recognised as service for extended leave purposes:
  - all periods of permanent full time or part time teaching, whether broken or continuous service with the NSW Department of Education;
  - all periods of temporary full time or part time teaching, whether broken or continuous service with the NSW Department of Education;
  - all periods of prior permanent and temporary full time or part time service under the *Government Sector Employment Act 2013*, *Public Sector Employment and Management Act 2002*, *Public Sector Management Act 1988* and/or the *Public Service Acts 1902 and 1979*, the *Teaching Services Act 1970* or the *Teaching Service Act 1980*;
  - all casual **supply** teaching service with the NSW Department of Education prior to 20 May 1985, whether continuous or broken;
  - all continuous casual teaching service (supply and relief) with the NSW Department of Education from 20 May 1985. Continuous service is defined by the *Long Service Leave Act 1955*.

Generally, a break in service in excess of two (2) months between:

- periods of casual teaching; and
- ceasing duty as a casual teacher and entering on duty as a temporary or permanent teacher will break continuity of service.

School vacations or approved leave are not counted in the two (2) months period, nor do they constitute a break in continuity of service.

- b) Previous periods of permanent and temporary full time and part time teaching service are automatically recognised and where appropriate credited at the time a teacher is re-employed.
- c) Teachers who have previously been employed in the Public Service or by the NSW Technical & Further Education Commission must make written application to the relevant EDConnect HR Shared Services for recognition of such service. A Statement of Service from the previous employer must accompany the request.

#### 4.7.17.2 Recognition of other service

- a) Teaching service overseas or service with a private school in Australia is not recognised for extended leave purposes.
- b) In some circumstances previous teaching service with other State or Commonwealth Departments of Education or service other than teaching with a Governmental authority of the Commonwealth or another state or a New South Wales authority may be recognised for extended leave purposes.

#### 4.7.17.3 Basis for recognition

A teacher who commenced employment with the Department after 1 January 2006, who had a period of service with a Commonwealth, interstate or NSW public sector agency and whose service is



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continuous shall have such service recognised in accordance with the requirements of [Schedule 2 of the Government Sector Employment Regulation 2014](#).

A teacher who commenced employment with the Department prior to 1 January 2006 and who had a period of service in the public service of another state, the Commonwealth, a declared authority under the [Transferred officers Extended Leave Act 1961](#), or in the armed forces of the Commonwealth of Australia and whose service is continuous shall have such service recognised in accordance with the requirements of the [Transferred officers Extended Leave Act 1961](#).

### 4.7.17.4 Criteria for Eligibility

- a) Under the Schedule 2 of the [Government Sector Employment Regulation 2014](#) teachers eligible for recognition of service are those who:
- commenced employment with the NSW Department of Education and training after 1 January 2006; and
  - were previously employed in a Commonwealth, interstate or NSW government agency declared as such on the list of declared bodies on the Public Service Commission's [website](#).
- b) Under the [Transferred officers Extended Leave Act 1961](#), teachers eligible for recognition of service are those who:
- transferred from a department of the Commonwealth or of any state public service to which the various Public Service Acts apply or from the armed forces of the Commonwealth of Australia and were employed by the Department subsequent to 24 March 1961; or
  - transferred from a Governmental authority of the Commonwealth or another state or a NSW authority and were employed by the Department on or subsequent to the date of publication of a notice in the Government Gazette that such a governmental authority or state authority is declared to be an employer under the Act.

### 4.7.17.5 Criteria for continuous service

- a) For the purpose of the [Transferred officers Extended Leave Act 1961](#) service shall be deemed to be continuous under the following circumstances:
- if the teacher entered on duty in the Teaching Service on the next working day following cessation of employment with the former declared employer;
  - if the teacher was accepted for employment by the NSW Department of Education prior to the last day of service with the former governmental employer, in which case a break of up to two months may be allowed between cessation of duty with the former governmental employer and commencement of duty in the Teaching Service;
  - if having served with the armed forces of the Commonwealth of Australia during or partly during a period of war in which the Naval, Military or Air Forces of Australia were engaged, or having served in an area prescribed as an operational area for the purposes of subsection two of Section 4 of the Act, commenced employment in the Teaching Service within twelve months after ceasing service with the armed forces; or
  - if a teacher, with former governmental service recognised by the [Transferred officers Extended Leave Act 1961](#), undertakes an approved course of teacher training and on completion of the course is immediately appointed as a teacher. In this case the period of teacher training does not count as service for extended leave purposes but is not regarded as a break in service for the purposes of the above Act.
- b) For the purpose of Schedule 2 of the [Government Sector Employment Regulation 2014](#) service shall be deemed to be continuous under the following circumstances:
- if the teacher entered on duty in the Teaching Service up to two months following cessation of employment with the former declared employer;
  - if the earlier period comprises full-time war service as a member of the Australian Defence Force, where the service occurring during, or partly during, a period of war in

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which the Australian Defence Force is engaged, or is service of a kind declared by the regulations to be war service for the purposes of Schedule 2 of the *Government Sector Employment Regulation 2014*, commenced employment in the Teaching Service within twelve months after ceasing service with the armed forces; or

- if a teacher, with former governmental service recognised by Schedule 2 of the *Government Sector Employment Regulation 2014*, undertakes an approved course of teacher training and on completion of the course is immediately appointed as a teacher. In this case the period of teacher training does not count as service for extended leave purposes but is not regarded as a break in service.

### 4.7.17.6 Service recognition

- a) With the exception of teachers who transfer from a former declared NSW Public Sector Authority or recognised NSW public sector agency no monetary liability shall be accepted for any extended leave accrued with another employer. Where applicable, the teacher shall be paid the monetary value for such leave by the previous employer and recognition shall only be granted for the period of service.
- b) If a teacher transfers within the meaning of the Regulation, to the Teaching Service from a declared NSW Public Sector Authority or recognised NSW public sector agency, monetary liability for accrued extended leave will be accepted by the Department provided that the teacher does not accept payment on resignation from the previous employing authority.
- c) Where a teacher is employed by the Department and has had previous service with a declared employer under the *Transferred officers Extended Leave Act 1961* or with a recognised commonwealth, interstate or NSW government agency under Schedule 2 of the *Government Sector Employment Regulation 2014* recognised as service for extended leave purposes, all previous service accepted by the prior employer for extended leave purposes shall be credited.
- d) As a general rule, a teacher becomes entitled to extended leave in respect of the total period of acceptable service less leave paid for or taken during service.

### 4.7.17.7 Procedures for recognition of service

- a) In order to apply for recognition of previous service with a state or Commonwealth authority, teachers should submit a written request to the relevant Employee Services Centre, and accompany the application with a statement of service from the previous employer. The statement of service should indicate the period or periods of employment, the FTE of the service, details of any leave without pay or unauthorised absences (or confirmation of nil leave taken) and where appropriate details of extended leave taken during service or for which payment in lieu of leave was made on cessation of employment.
- b) Teachers requesting recognition of service with the armed services of the Commonwealth of Australia should make application to the relevant Employee Services Centre for recognition of such service and accompanying the application with a copy of their service record from the Department of Defence.
- c) Teachers initially employed as a temporary or casual teacher who meet the “continuous service criteria” may also be eligible (under the *Transferred officers Extended Leave Act 1961* or *Schedule 2 of the Government Sector Employment Regulation 2014*) to claim recognition of previous service.

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### 4.7.18 Extended leave accrual tables

Table 1

**Extended Leave Entitlements for 7 to 10 Years of Completed Service**

Period of Service	Period of Leave Due
7	30.8 days
8	35.2 days
9	39.6 days
10	44 days

5 to 10 years' service: accrual per week – 0.0843 days. Accrual per day – 0.0169 days

Table 2

**Extended leave entitlement for completed years of service of 10 years or more**

Period of Service	Period of leave due
10 years	44 days
11 years	55 days
12 years	66 days
13 years	77 days
14 years	88 days
15 Years	99 days
16 years	110 days
17 years	121 days
18 years	132 days
19 years	143 days
20 years	154 days
21 years	165 days
22 years	176 days
23 years	187 days
24 years	198 days
25 years	209 days
26 years	220 days
27 years	231 days
28 years	242 days
29 years	253 days
30 years	264 days

After 10 years' service: accrual per week – 0.2108 days. Accrual per day – 0.0422 days.

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**Table 3**

**Extended leave entitlement for service for part of a year after 10 years**

<b>Period of service</b>	<b>Additional days due</b>
1 month	0.9
2 months	1.8
3 months	2.8
4 months	3.7
5 months	4.6
6 months	5.5
7 months	6.4
8 months	7.3
9 months	8.3
10 months	9.2
11 months	10.1
12 months	11

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### 4.7.19 Long service leave – general

Long Service Leave as provided by the *Long Service Leave Act 1955* is only available to casual teachers. Teachers who work in either a permanent or temporary role and in a casual capacity may have both an extended leave and long service leave entitlement dependent on their service. Refer to sections 4.7.1 – 4.7.18 for Extended Leave.

Long service leave is available to casual teachers as a monetary payment in accordance with 4.7.19.6 upon cessation or termination of employment and may also be taken as leave in certain circumstances in accordance with 4.7.19.7.

For the purpose of this provision, ‘cessation’ refers to the end of a casual engagement ie the casual employee is no longer nominated against a casual position in a school whereas ‘termination’ refers to the termination of the employment relationship by either the department or the employee through a formal resignation or retirement.

#### 4.7.19.1 Eligibility

- a) In order to be eligible for long service leave, a teacher must have completed ten or more years of continuous service.
- b) For the purpose of determining eligibility, service includes:
  - Permanent and temporary teaching service that merges continuously with service as a casual teacher;
  - Casual teaching service if continuous with any other casual permanent or temporary service.

A break of up to two months exclusive of school vacations will not break continuity of service.

#### 4.7.19.2 Supply casual teachers – prior to 20 May 1985

- a) Unless already recognised on permanent or temporary teacher appointment for Extended Leave purposes prior to transferring to SAP payroll, the following supply casual service prior to 20 May 1985 will be recognised:
  - All full time supply service, continuous or broken;
  - Permanent or temporary teaching service which precedes or follows supply casual service;
  - Leave granted on full or half pay;
  - Unpaid sick leave taken prior to January 1969, which would, in current terms, qualify for payment.
  - Regular part time supply service.
- b) Relief casual teaching service is not recognised

#### 4.7.19.3 Casual teaching – post 19 May 1985

- a) On and from 20 May 1985 all continuous casual service will be recognised in accordance with the provisions of the *Long Service Leave Act 1955*.
- b) Continuous service will be determined in accordance with the provisions of the *Long Service Leave Act 1955*.
- c) The following absences, where they occur during a period of casual employment, count as service for long service leave purposes:

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- absences caused by the casual teacher under the terms of their employment, for instance, all periods of approved, paid leave;
  - absences due to illness or injury, including unpaid sick leave. In terms of unpaid sick leave, the casual teacher must, in each case that absence on account of illness or injury is required to be considered as service, provide written notification of the absence to EDConnect. Where the absence exceeds three consecutive days, a medical certificate must be provided to EDConnect for the absence to be considered as service.
- d) The following interruptions in service, whilst not counted as service, do not break the continuity of service:
- absences arising directly or indirectly from an industrial dispute (including industrial action);
  - absences on and from 9 October 2000 by reason of unpaid maternity, adoption or paternity leave granted to a casual teacher in accordance with Part 4 of the *Industrial Relations Act 1996* as in force at the time of commencement of the leave;
  - absences for any cause by leave of the Department. This relates to all periods of unpaid leave (other than unpaid sick leave as referred to in c) above) to which the employee is entitled and which is approved by the Department;
  - interruptions in service for other reasons where the casual teacher returns to the services of, or is re-employed by, the Department within two months of the date on which service was interrupted. Student vacations are not counted in the two month period, nor do they constitute a break in service.
- e) Any break in continuity of service, as defined in the Act, will mean that service prior to the break will not count for the purpose of determining a teacher's eligibility to long service leave or the entitlement. A casual teacher who has become eligible for long service leave in accordance with 4.7.19.1 will retain their entitlement irrespective of any break in continuity occurring after becoming eligible.

### 4.7.19.4 Other service

- a) The following periods of NSW Government service shall be recognised as service for long service leave purposes:
- all periods of prior full time or part-time permanent or temporary teaching that merges continuously with, service with the NSW Department of Education;
  - all periods of prior continuous permanent and temporary full time or part time service under the *Government Sector Employment Act 2013*, *Public Sector Employment and Management Act 2002*, *Public Sector Management Act 1988* and/or the *Public Service Acts 1902 and 1979*, the *Teaching Services Act 1970* or the *Teaching Services Act 1980*;
- b) In some circumstances previous teaching service with other State or Commonwealth Departments of Education or service other than teaching with a Government authority of the Commonwealth or another state or a NSW authority may be recognised for long service leave purposes under the provisions of the *Transferred Officers Extended Leave Act 1961* that merges continuously with service with the NSW Department of Education.

### 4.7.19.5 Entitlement

- a) Provided eligibility for long service leave has been established, the method of calculating the entitlement to long service leave is solely based on the casual service as follows:
- 2 months (44 days) long service leave on completion of 10 years' service; and thereafter:

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- 1 month (22 days) long service leave for each 5 years subsequently completed. Pro-rata is only available in case of termination and is based on completed years.
- b) Where the services of a teacher are terminated by the Secretary for any reason, other than the teacher's serious and willful misconduct, or by the teacher on account of illness, incapacity or domestic or other pressing necessity and the teacher has five (5) or more years' service, but less than ten (10) years, the teacher will be eligible for a monetary payment of long service leave on the basis of one month for five years' service and thereafter on a proportionate basis.
- c) Where service for long service leave purposes includes eligible periods of permanent or temporary service, entitlement for long service leave will be proportional to the number of years' of active casual service only. For example:
- A teacher works continuously for 5 years as a casual teacher and then accepts a full time temporary position for 3 years, after which they return to casual teaching (with no break in service). After another 2 years of casual work, the teacher will have completed 10 years of continuous service and be eligible for long service leave. Their long service leave entitlement will be based on 7 years of casual service (30.8 days) and they will have accrued extended leave of 13.2 days in respect of their temporary teaching service. The two are separate entitlements and can only be taken or paid out in respect of the role in which they accrued.
- d) Casual service recognised for the purpose of extended leave prior to migrating to SAP will not be factored for the purpose of calculating the entitlement to long service leave as it is factored into the extended leave balance.

### 4.7.19.6 Payment of long service leave

- a) Long service leave is paid at the average weekly earnings as a casual teacher over the last 12 months or the last 5 years whichever is the greater. For the purpose of this calculation the 12 months or 5 years will be that period immediately prior to the first day of leave or the last day of active casual engagement.
- b) On termination of employment, the 12 months or 5 years will be that period immediately prior to the day of separation. Payment commences from the day following termination of employment, irrespective of whether a vacation follows or not.
- c) On termination of employment, casual teachers who consider that they have established an entitlement, should make an application to EDConnect for payment of the monetary value of long service leave.
- d) On the death of a casual teacher who has an entitlement to long service leave the Department will, upon written request, pay to the teacher's estate the monetary value of the entitlement.

### 4.7.19.7 Granting of Long Service Leave

- a) A casual teacher with ten (10) years' service may make an application to take long service leave as leave, provided that the teacher is employed by the Department immediately prior to the first day of long service leave, or to be paid the value of long service leave on cessation. Where the employee has an active casual engagement, an application for long service leave endorsed by the relevant Principal/Manager must be submitted to EDConnect at least three months in advance of the first day of leave.

Where the employee has ceased casual employment ie not in an active position in a school, a payment in lieu of leave application for LSL may be made to EDConnect.

- b) In accordance with s 4(3)(b) of the *Long Service Leave Act, 1955* leave may be taken or payment made for one continuous period, or subject to approval of the Secretary, in the following separate periods and not otherwise:

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- i) where the amount of leave is two months, in two separate periods;
- ii) where the amount of leave exceeds two months and does not exceed nineteen and one half weeks, in two or three separate periods;
- iii) where the amount of leave exceeds nineteen and one-half weeks, in two, three or four separate periods.

This means that:

- after 10 years of service the employee's entitlement can be accessed on one or two separate occasions
  - after 15 years, on one, two or three separate occasions (cumulative)
  - after 20 years, on one, two, three or four occasions
- c) Payment during Long service leave is on the same basis as that provided at cl 4.7.19.6 (a).
  - d) Applications for long service leave must be submitted to EDConnect at least three months in advance of the first date of leave unless otherwise approved by the Department.
  - e) A casual teacher will not be approved to take long service leave on half pay.
  - f) Long service leave may not be used to make up salary whilst on another form of leave, nor taken during a school vacation period.
  - g) A casual teacher does not have right of return to any position previously occupied at the conclusion of a period of long service leave except where the teacher had originally been engaged for a period beyond the last date of long service leave granted. In such circumstances, the teacher's application for leave must have the support of the relevant principal(s).



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### 4.8 Family and community service leave and personal carer's leave

#### 4.8.1 General

Teachers can utilise family and community service leave to meet a range of family activities and community service responsibilities. This could include a need to respond to an emergency situation or in the event of planned absences for family and community service responsibilities where some advance notice is given.

Family and community service leave to credit may be granted for family and community activities and responsibilities for which the teacher certifies that there is sufficient need to absent themselves from work.

Family and community service leave is available to permanent and temporary teachers and accrues on a pro rata basis during periods of part time work.

A teacher's eligibility for family and community service leave for family and community activities and responsibilities or in a case of pressing necessity will be determined in accordance with the definitions set out in Section 4.8.2 h).

The maximum amount of family and community service leave which may be granted to a teacher is:

- Two and a half (2½) days in a teacher's first year of service;
- Two and a half (2½) days in a teacher's second year of service; and
- An accrual of one (1) day per year thereafter.

The amounts in the three dot points above are fully cumulative.

Where family and community service leave has been exhausted, additional paid family and community service leave of up to two (2) days may be granted on a discrete 'per occasion' basis to a teacher on the death of a family member. For the purposes of this section a 'family member' means a class of person as defined in Section 4.8.2 h).

Teachers who apply for a period of leave that exceeds the maximum entitlement to family and community service leave may be granted leave without pay or extended leave to credit.

#### 4.8.2 Use of sick leave to care for dependants

- a) When family and community service leave has been exhausted, a teacher with responsibilities to a class of person defined in Section 4.8.2 h) who needs their care and support shall be entitled to use the existing balance of sick leave accrued from the past three (3) years. The three (3) year period is determined as being the three (3) calendar years immediately preceding the first day of personal carer's leave.
- b) In exceptional circumstances leave in excess of this limit may be approved. In these circumstances the grant of any further leave is limited to a teacher's sick leave balance minus leave granted under Section 4.8.2 a).

In determining whether additional leave may be granted, factors to be taken into consideration will include:

- the amount of leave already granted for the current absence;
  - the seriousness of the illness of the dependant;
  - whether the teacher is the only person who can provide care to the dependant; and
  - whether the illness of the dependant is such as to require ongoing long term care.
- c) The teacher shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned or that the illness is such as to require care by another person. Applications for leave in excess of three (3) days must be supported by either a medical certificate or statutory declaration.

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- d) The teacher has the right to choose the method by which the grounds for leave are established, that is, by production of either a medical certificate or statutory declaration.
- e) The teacher is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- f) A teacher shall, wherever practicable, give the Department notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the teacher to give prior notice of absence, the teacher shall notify the Department by telephone of such absence at the first opportunity on the day of absence.
- g) In normal circumstances, a teacher will not be granted personal carer's leave where another person has taken leave to care for the same person.
- h) The entitlement to use sick leave is subject to:
  - i) the teacher being responsible for the care and support of the person concerned; and
  - ii) the person concerned being:
    - a spouse of the teacher; or
    - a de facto spouse, who, in relation to a person, who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the teacher or spouse or de facto spouse of the teacher; or
    - a relative of the teacher who is a member of the same household, where for the purposes of this sub clause:
      - 1) "relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;
      - 2) "affinity" means a relationship that one spouse or partner has to relatives of the other; and
      - 3) "household" means a family group living in the same domestic dwelling.

### 4.8.3 Personal carers entitlements for casual teachers

- a) Casual teachers are entitled to not be available to attend work, or to leave work, if they need to care for a person prescribed in 4.8.2 h) above who is sick and requires care and support, or who requires care due to an unexpected emergency. The casual teacher is not entitled to any payment for the period of non-attendance.
- b) The Principal and the teacher shall agree on the period for which the teacher will not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (ie two days) per occasion.
- c) The Department must re-engage a casual teacher who has accessed the entitlements provided for under this section.
- d) The teacher shall, wherever practicable, give the Principal notice, prior to the absence, of the:
  - name of the person requiring care and their relationship to the teacher,
  - the reasons for taking such leave, and
  - the estimated length of the absence.

If it is not practicable to give prior notice of the absence, the teacher shall notify the Principal

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by telephone of such absence at the first opportunity on the day of the absence.

- e) The casual teacher shall establish either through a medical certificate or statutory declaration, the illness of the person concerned, and that the illness is such as to require care by another person.

### 4.8.4 Bereavement leave for casual teachers

- a) Casual teachers are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in 4.8.2 h) above. The casual teacher is not entitled to any payment for the period of non-attendance.
- b) The Principal and the teacher shall agree on the period for which the teacher will not be available to attend work. In the absence of agreement, the teacher is entitled to not be available to attend work for up to 48 hours (ie two days) per occasion.
- c) The Department must re-engage a casual teacher who has accessed the entitlements provided for under this section.
- d) The casual teacher shall, wherever practicable, give the Principal notice, prior to the absence, of the:
- name of the person deceased and their relationship to the teacher,
  - the reasons for taking such leave, and
  - the estimated length of the absence.
- e) The casual teacher shall, if required, establish by documentation acceptable to the Department, or by statutory declaration, the death of the family member.

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### 4.9 Leave in the case of natural emergencies

- 4.9.1 Disruptions to schools resulting from natural emergencies may result in schools temporarily ceasing operations. Please refer to the Health and Safety Directorate's [Procedures to temporarily cease operations due to an emergency or potential emergency situation](#).
- 4.9.2 Teachers should make reasonable decisions about their safety and wellbeing in regard to safely getting to work. With reference to available information, they should determine whether it is safe or not to travel to their school, or to an alternative school which is accessible.
- 4.9.3 Teachers who are unable to attend their own or another school because of floods, snowfall, bushfires or other natural emergencies may be granted family and community service leave.
- 4.9.4 Should a teacher exhaust their family and community service leave entitlement as a result of a natural emergency, consideration may be given to grant additional family and community service leave in the event of another natural emergency arising.
- 4.9.5 In the event that a casual teacher has reported to a school for duty but has subsequently been sent home due to the adverse weather/natural disaster they are entitled to receive one half of one day's pay.
- 4.9.6 Teachers who are members of a volunteer emergency service fighting fires or floods should refer to Sub-Section 4.14.22 State emergencies of Section 4.14 Special leave.

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### 4.10 Leave for sporting fixtures

- a) Leave to participate in sporting fixtures is available to teachers who participate in the following sports at the highest level:

<b>Summer Olympic Sports Tokyo 2021</b>	<b>Commonwealth Sports Birmingham United Kingdom 2022</b>
Archery	Athletics
Athletics	Aquatics (Swimming, Diving)
Badminton	Badminton
Baseball	Basketball
Basketball	Boxing
Beach Volleyball	Cycling Mountain Bike
Boxing	Cycling Road
Canoe Slalom	Cycling Track
Canoe Sprint	Gymnastics Artistic
Cycling BMX	Gymnastics Rhythmic
Cycling Mountain Bike	Hockey
Cycling Road	Judo
Cycling Track	Lawn Bowls
Diving	Netball
Equestrian/ Dressage	Rugby Sevens
Equestrian/ Eventing	Squash
Equestrian /Jumping	Table Tennis
Fencing	Triathlon
Football	Weightlifting
Golf	Wrestling
Gymnastics Artistic	
Gymnastics Rhythmic	
Handball	
Hockey	<b>Winter Olympic Sports – Beijing 2022</b>
Judo	Biathlon
Karate	Bobsleigh
Modern Pentathlon	Curling
Rowing	Figure Skating
Rugby	Ice Hockey
Sailing	Luge
Shooting	Nordic Combined
Skateboarding	Short Track Speed Skating
Softball	Skeleton
Sports Climbing	Skiing (Alpine, Cross Country and Freestyle)
Surfing	Ski Jumping
Swimming	Snowboard
Synchronized Swimming	Speed Skating
Table Tennis	
Taekwondo	<b>Additional Sports</b>
Tennis	Baseball/ Softball
Trampoline	Cricket
Triathlon	Rugby Union
Volleyball	Soccer
Water Polo	Surf Lifesaving
Weightlifting	Touch Football
Wrestling Freestyle	Women's Rugby League
Wrestling Greco-Roman	

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Australian Olympic Committee and Commonwealth Games Australia.

<http://olympics.com.au/>

<http://commonwealthgames.com.au/>

Please note that the list of sports attached to the Olympic and Commonwealth games can vary for each new set of games. This list is for sports that will be at the Tokyo 2020 Summer Olympics and the Birmingham 2022 Commonwealth Games. All special leave applications received prior to such games would need to be major events in these sports such as State, National or World Championships. Lists will be updated after each games are completed.

For sports listed as Olympic, Commonwealth or on the Additional Sports List, all applications for special leave will only be considered by employees who are members of the open team and who are participating in State, National or World Championships. (Open team means the top ranked team in the state or nation and excludes age competitions such as over 35yrs and Masters Games)

- b) To be eligible for special leave for a sport listed at 4.10 (a) the event must be run by the appropriate sporting organisation and/ or International Federation recognised by the International Olympic Committee. The Australian National Sporting Organisations are listed below. For International Federations please see chapter 6.17.13.2 Table 4 of the Public Service Industrial Relations Guide.

[http://www.industrialrelations.nsw.gov.au/biz\\_res/oirwww/pdfs/Public\\_Service\\_Industrial\\_Relations\\_Guide.pdf](http://www.industrialrelations.nsw.gov.au/biz_res/oirwww/pdfs/Public_Service_Industrial_Relations_Guide.pdf)

Eg: Triathlon will only be eligible for special leave when the event is run by Triathlon Australia.

National Sporting Organisation	Sport
Archery Australia Inc	Archery
Athletics Australia	Athletics
Badminton Australia	Badminton
Baseball Australia	Baseball
Basketball Australia	Basketball
Australian Biathlon Association Inc	Biathlon
Sliding Sports Australia	Bobsleigh / Skeleton
Bowls Australia	Bowls
Boxing Australia	Boxing
Paddle Australia	Canoeing
Cricket Australia	Cricket
Cycling Australia	Cycling
Diving Australia Inc	Diving
Equestrian Australia	Equestrian
Australian Fencing Federation Inc	Fencing
Football Federation Australia	Football (Soccer)
Gymnastics Australia Inc	Gymnastics
Handball Australia	Handball
Hockey Australia	Hockey
Ice Hockey Australia	Ice Hockey
Ice Skating Australia Inc	Ice Skating
Judo Federation of Australia Ltd	Judo
Australian Karate Federation	Karate
Netball Australia	Netball
Australian Paralympic Committee	Paralympics
Rowing Australia Ltd	Rowing
Rugby Australia	Rugby Union

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Australian Sailing	Sailing
Shooting Australia	Shooting
Skate Australia Inc	Skateboard
Ski & Snowboard Australia	Skiing
Softball Australia	Softball
Sport Climbing Australia	Sports Climbing
Squash Australia Ltd	Squash
Surf Life Saving Australia	Surf Lifesaving
Surfing Australia	Surfing
Swimming Australia Ltd	Swimming
Synchro Australia	Synchronized Swimming
Table Tennis Australia	Table Tennis
Tennis Australia	Tennis
Touch Football Australia	Touch
Triathlon Australia	Triathlon
Volleyball Australia	Volleyball
Water Polo Australia Ltd	Water Polo
Australian Weightlifting Federation Inc	Weightlifting
Wrestling Australia Ltd	Wrestling

- c) The category and amount of leave is determined by the status of the particular event in which the teacher is participating. The table below provides a summary of the entitlements to leave for sporting fixtures. For full details, refer to the following sections. Please note in the table below that any LWOP taken counts as service for incremental purposes

Type of activity	Leave available
Leave for local competitions (competitors only)	LWOP or LSL to credit. Maximum 2mths once in 5year period.
Leave to represent a State * (competitor, coach, team manager)	5 days paid special leave in any 12mths period. After 5 <sup>th</sup> day then LWOP or LSL to credit.
Leave to represent Australia – in country (competitor, coach, team manager)	20 days paid special leave in any 12mth period. After 20 <sup>th</sup> day then LWOP or LSL to credit.
Leave to represent Australia Overseas (competitor, coach, team manager)	20 days paid special leave. After 20 <sup>th</sup> day then LWOP or LSL to credit.
Leave for officials of Children's International Sporting Events	Special leave full pay. No limits.

\* Please note that some sports such as triathlon do not hold state championships but rather hold qualifying events to make the squad to represent Australia in world championships, Commonwealth Games or Olympics. As such, the leave available for these qualifying events is the same in quantum as that for sports for which there are state championships i.e.: 5 days in any period of twelve months

- d) Family and community service leave to credit may be used in conjunction with or in lieu of any of the following leave types.

### 4.10.1 Leave for local competitions

- a) Leave of absence without pay which counts as service for incremental purposes, or if available, extended or long service leave to credit, may be granted to a teacher who is selected to compete in any of the following amateur fixtures:

- a representative fixture immediately leading to interstate or international honours in any sport listed at 4.10 (a); or

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- a combined country versus combined city fixture which may lead to interstate honours; or
  - in Country Week major amateur sporting fixtures which could result in the teacher gaining State or Australian representative honours.
- b) A teacher who competes as a member of an inter-district team at the highest grade or level may be granted leave as follows:
- the teacher must be competing in a sport listed at 4.10 (a) at the highest grade or level and may be either an amateur or, in this instance only, a professional competitor;
  - the period of absence is without pay or if available, extended or long service leave to credit;
  - in general, leave is for a maximum of two months. Applications for leave in excess of two months will be considered on their merits;
  - leave of this nature will only be granted once in any period of five years;
  - leave without pay of less than six months will count for extended or long service leave purposes when the teacher has completed ten years credited service;
    - leave without pay in excess of six months will not count for extended or long service leave purposes;
  - superannuation requirements for teachers who are contributors to a State Government Superannuation scheme will be the same as for Leave Without Pay. See Superannuation, Chapter 12 for details.

### 4.10.2 Leave to represent Australia

- a) Where the sporting fixture is held in Australia, teachers selected to represent Australia as a competitor, coach or team manager for a sport listed at 4.10 (a) may be granted up to twenty days special leave on full pay in any period of twelve months.
- b) Such leave is to cover the period of the competition plus reasonable travelling time.
- c) If leave in excess of twenty days is required it may be granted as leave without pay or if available extended or long service leave to credit.
- d) Leave without pay, if granted, counts for incremental purposes.

### 4.10.3 Leave to represent a state

Teachers selected to represent a State for a sport listed at 4.10 (a), irrespective of whether the fixture is held within or outside Australia, may be granted up to five days special leave in any twelve month period as outlined under 4.10.2 a) to d).

### 4.10.4 Leave to represent Australia overseas

- a) Where the sporting fixture is held overseas, a teacher selected to represent Australia as a competitor, coach or team manager for a sport listed at 4.10 (a) may be granted up to 20 days full pay special leave in any period of twelve months.
- b) This leave, which can be taken in separate parts, is available for the period of the fixtures, plus reasonable travelling time.
- c) Where the period outlined in a) above is insufficient, leave without pay which counts for incremental purposes or, if available, extended or long service leave may be granted.
- d) This leave is only granted to represent Australia for a sport listed at 4.10 (a).
- e) A letter from the national sporting body confirming selection and the dates of the tour or fixture must accompany the application for leave.



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- f) As indicated in a) above this leave is only available once in any period of twelve months. However, where a teacher is also selected to represent Australia at the Commonwealth or Olympic Games, an additional 20 days full pay special leave may be granted within the 12 month period for this purpose.

### 4.10.5 Leave for officials of children's international sporting events

- a) Teachers selected by the official governing body of a particular school children's sport, as either coach or team manager of a representative school children's sporting team participating with the prior approval of the Secretary of the Department of Education in an official international event or tour either in Australia or overseas may be granted special leave on full pay.
- b) Special leave is only available for the period of the fixture or tour, plus reasonable travelling time on full pay, where necessary.
- c) Other officials may be granted leave without pay which counts for incremental purposes or if available extended or long service leave to credit.

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### 4.11 Leave without pay

#### 4.11.1 General

- a) Teachers may be granted leave without pay for any period if good and sufficient reasons are applicable.
- b) Generally, leave without pay will not be granted for short periods immediately before or after school vacations.
- c) Leave without pay will not be granted in order to take up a teaching position with a NSW private or independent school.
- d) Generally, unpaid leave exceeding five consecutive days in any incremental period does not count as service for salary increments.
- e) Generally, temporary teachers will not be granted leave without pay during a temporary engagement unless special circumstances exist.
- f) A total of more than five days leave without pay in any school year will result in a reduction of vacation pay on a pro rata basis.
- g) Where a period of leave without pay does not exceed ten consecutive working days, salary is paid for any public holidays occurring during the period.
- h) The following chart shows the effect on public holidays of a period of leave without pay taken following a form of half pay leave.

Leave Without Pay following Leave on Half Pay	Public Holidays
<b>No pay not exceeding five working days (following half pay not exceeding five working days)</b>	Full pay
<b>No pay not exceeding five working days (following half pay exceeding five working days)</b>	Full pay
<b>No pay not exceeding ten working days (following half pay not exceeding ten working days)</b>	Full pay
<b>No pay not exceeding ten working days (following half pay exceeding ten working days)</b>	Half pay
<b>No pay exceeding ten working days</b>	No pay

#### 4.11.2 Categories of leave without pay

- a) The most common circumstance for granting leave without pay is for personal reasons but there are many other categories of leave without pay which teachers may be granted.
- b) The various categories of leave without pay and the conditions under which leave may be approved are distinct and separate from the provisions in respect of leave without pay for personal reasons.
  - b) Provisions for other categories of leave without pay follow those for personal reasons.

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### 4.11.3 Leave without pay for personal reasons

#### 4.11.3.1 Entitlement

- a) Leave without pay for personal reasons is the category of leave granted to teachers who wish to take an extended absence from teaching.
- b) Leave without pay for personal reasons such as travel interstate or overseas or for child rearing purposes is generally limited to a maximum of three years in a teacher's career.

#### 4.11.3.2 Eligibility

- a) A minimum of two years current continuous permanent service, excluding temporary or casual service, must be completed before teachers are eligible to apply for leave without pay for personal reasons.
- b) Following completion of a one year traineeship with financial assistance to undertake a District School Counsellors Course, Special Education Course, Teacher Librarian Course or other similar courses, teachers must serve for three years or as otherwise stated in the relevant deed of agreement before being eligible to apply for leave without pay for personal reasons.
- c) A minimum of two years must elapse between each period of leave without pay for personal reasons.
- d) Generally, a teacher whose service is unsatisfactory will not be granted leave without pay for personal reasons.

#### 4.11.3.3 Conditions

- a) Unless there are special circumstances an application for leave is to be submitted three months in advance and must state the first and last date of leave. Teachers seeking to proceed on leave on day 1 of term 1 are to submit their leave application three months prior to the end of the school year.
- b) With the exception of any period of casual or temporary teaching undertaken with the Department, any period of teaching service completed while on leave without pay for personal reasons does not count for incremental purposes.
- c) A period of leave without pay exceeding six months does not count as service for extended leave purposes.
- d) A period of leave without pay of less than six months will count as service for extended leave purposes when a teacher has completed at least ten years paid service.
- e) Teachers are eligible to take a combination of leave without pay and extended leave. The extended leave must precede the leave without pay except in the case where the leave is being taken prior to resignation or retirement. Irrespective of teachers' entitlements, they do not have to exhaust accrued extended leave prior to the commencement of leave without pay.
- f) In the case of a teacher on leave without pay for personal reasons, who becomes pregnant and whose anticipated date of birth falls within the approved period of leave, from the date the teacher advises of her pregnancy the remainder of the approved leave without pay or a period of twelve months, whichever is less, will not be debited against the total amount of leave without pay for personal reasons.

A teacher whose anticipated date of birth falls outside the approved period of leave is entitled at the end of the leave without pay to proceed to maternity leave.

#### 4.11.3.4 Duration of leave and application

Eligible teachers (see 4.11.3.2) may take leave without pay for up to a maximum of 3 years and must

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apply to their principal (or director educational leadership in the case of principals).

Principals (or director educational leadership in the case of principals) will consider the request and approve/not approve the leave, and in the case of approval determine whether the total period applied for or part thereof, will be approved.

### 4.11.3.5 Right of return

- a) Where the principal, or director of educational leadership, approves the leave, the teacher will retain right of return to their substantive position for a maximum period of three years, provided the total period of leave without pay for personal reasons taken in the teachers' career does not exceed 3 years .
- b) Should the teacher not return to their substantive position at the conclusion of their approved period of leave without pay, their employment may be subject to the provisions of [Section 77A \(1\) \(a\) of the Teaching Service Act 1980](#).

### 4.11.3.6 Resumption of duty

- a) Teachers who wish to resume duty prior to expiration of approved leave must give their principal at least one months' notice in writing and apply to change the end date of their leave. Consideration of requests of this nature will take into account whether a replacement teacher has been engaged.
- b) Teachers returning to duty following leave without pay should ensure that notification of their resumption is forwarded to the HR Shared Service Centre on the first day of duty.

## 4.11.4 Teaching while on leave without pay

While on leave without pay permanent teachers may undertake teaching with the Department on either a casual or temporary basis. Approval for casual or temporary teaching is an automatic part of the leave approval process.

### 4.11.4.1 Salary

For the purpose of this section a teacher includes a teacher in a promotion position.

- a) A permanent teacher on leave without pay who undertakes teaching in any one engagement of:
  - Less than four weeks full time; or
  - Less than two terms, one to four days per week

shall be deemed a casual teacher and be remunerated as such in accordance with clause 23 and schedule 4 of the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award*.

- b) A permanent teacher on leave without pay who undertakes teaching in any one engagement of:
  - four weeks or more full time;
  - two terms or more one to four days per week

shall be deemed a temporary teacher and be remunerated as such in accordance with clause 22 and schedule 1A or schedule 1B of the award as appropriate.

### 4.11.4.3 Conditions of employment - permanent teachers on leave without pay who undertake teaching as a casual teacher

The rates of pay of casual teachers are loaded by 5 per cent to be inclusive of the following incidents of employment: sick leave, family and community service leave, special leave and leave loading. Entitlements under the *Long Service Leave Act*, 1955 and Determination 5 of 2006 (or successor) are not affected.

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### 4.11.4.4 Conditions of employment - permanent teachers on leave without pay who undertake teaching as a temporary teacher

Temporary teachers have access on a pro rata basis to most of the conditions of permanent teachers.

### 4.11.4.5 Extended leave and long service leave

All periods of casual and temporary teaching will count as service for the purpose of accruing:

- extended leave as per division 5 of the *Teaching Service Act, 1980*, if the teaching is as a temporary teacher
- long service leave as per the *Long Service Leave Act 1955*, if the teaching is as a casual teacher.

### 4.11.4.6 Incremental progression

All periods of casual and temporary teaching undertaken in NSW government schools will count for the purpose of determining incremental progression.

### 4.11.4.7 Superannuation

Teachers should contact their superannuation fund to determine any impact of leave without pay on superannuation payments.

## 4.11.5 Other employment while on leave without pay

- a) Teachers on leave without pay for personal reasons may engage in employment, including teaching, while overseas or interstate.
- b) Teachers on leave without pay are not permitted to teach in an independent or private school in New South Wales.
- c) Teachers wishing to undertake employment in New South Wales, with the exception of teaching undertaken in NSW government schools, must make [written application for approval](#) for private or secondary employment.

## 4.11.6 Further application for leave

Teachers must give at least three months' notice if they wish to extend a period of leave without pay. Notice is to be given by way of submission of a further application for leave to principals, or the director educational leadership in the case of principals.

## 4.11.7 Resignation while on leave without pay

Should a teacher decide to resign while on leave without pay, their last day of service will be the date nominated on the separation form as the effective date or the last date of the approved leave, whichever is the earlier.

## 4.11.8 Australian Volunteers International

- a) Teachers who are selected for service with the Australian Volunteers International may be granted up to two years leave without pay to participate in this voluntary scheme.
- b) A minimum of two years current continuous permanent service must be completed before teachers are eligible to apply for leave of absence.
- c) An application for leave setting out the first and last date of absence should be accompanied by documentary evidence verifying selection for and the period of service with the Australian Volunteers International.

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- d) The period of absence will not count as service for extended leave purposes.
- e) If participation in the program involves full time teaching, the period of teaching service will count for incremental purposes.
- f) Teachers who are contributors to a state government superannuation scheme do not have to pay the employer's contributions while on leave.
- g) Payment of personal contributions will be subject to the requirements of the particular scheme. See Chapter 12 for information on superannuation.
- h) Leave for this purpose does not reduce the career limit of leave without pay for personal reasons imposed by section 4.11.3.1.b)

### 4.11.9 Compassionate reasons

- a) In cases of emergency or compassionate circumstances, teachers may be granted leave without pay where a period of absence is required that is not covered by family and community service leave or where family and community service leave entitlements are exhausted.
- b) In special circumstances teachers may apply to take leave of absence without pay for the period necessary to provide full time medical care for a family member who is seriously ill.
- c) Applications for leave in these circumstances will be considered on an individual basis and where appropriate should be accompanied by documentary or medical evidence.

### 4.11.10 Competitors in eisteddfods or choral championships

Leave without pay not exceeding three days may be granted to teachers who are competitors in the City of Sydney or country Eisteddfods or interstate choral competitions.

### 4.11.11 Graduation ceremonies

- a) Where family and community service leave has been exhausted leave without pay may be granted for the time necessary for attendance at a graduation ceremony of a spouse, partner, son or daughter at a university or tertiary institution.
- b) Applications for leave without pay to attend other graduation ceremonies will be considered on their merits.

### 4.11.12 Days of religious significance

Where family and community service leave has been exhausted and members of any religious faith apply for leave to observe the holy days of their faith, they may be granted leave without pay or leave as a charge against extended leave, if due. See the Multicultural NSW list of [Days of Religious Significance](#).

### 4.11.13 Intrastate transfers

- a) Where a teacher's spouse or partner who is not a teacher is transferred intrastate, leave without pay may be granted for up to three years.
- b) Initially, an application for compassionate transfer, accompanied by documentary evidence regarding the spouse or partner's transfer, should be submitted to the Recruitment and Employment Directorate
- c) If no suitable vacancy is available, the teacher should then submit an initial application for leave without pay pending a vacancy.
- d) A teacher in this situation may find it advisable to apply for six months leave without pay in the first instance. If no vacancy occurs during that time further applications for extensions of

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leave should be submitted until such time as the teacher is appointed.

- e) Casual or temporary teaching may be undertaken while on leave without pay. The conditions of employment which apply in these circumstances are set out in Section 4.11.4.

### 4.11.14 Marriage leave

- a) Where, because of special circumstances, it is not possible to arrange to be married during school holidays, leave without pay may be granted. Generally leave will be restricted to ten working days.
- b) The leave application, accompanied by all relevant information, should be submitted six weeks in advance.

### 4.11.15 Parliamentary elections

#### 4.11.15.1 State elections

- a) The conditions under which teachers may contest State Elections are prescribed by Section 71 of the [Government Sector Employment Act 2013](#).
- b) It is not necessary for a teacher to resign prior to the election but, if elected as a member of either house, the teacher must resign from the Teaching Service upon the declaration of the poll. The last day of service will be the date on which the teacher is declared elected.
- c) In order to avoid potential conflict between political interests and the teacher's employment, it would be preferable for the teacher to take leave in order to contest an election. Teachers may be granted leave without pay or extended leave, if due.
- d) For more details see [PSCC2013 – 03 Contesting Elections](#).

#### 4.11.15.2 Federal elections

- a) The conditions under which teachers may contest Federal Elections are prescribed by the Section 44 of the Commonwealth of Australia *Constitution Act* and Section 72 of the *Government Sector Employment Act 2013*.
- b) Teachers must resign before nominating for election to either house. The last day of service of a teacher contesting a Federal election must be no later than the day prior to the closing date for nominations.
- c) If a teacher fails to be elected the resignation may be withdrawn and the teacher reappointed to their previous position provided:
- the resignation took effect within three months of the date of the election;
  - the resignation stated an intention to contest the election; and
  - the teacher makes written application for reappointment within two months after the declaration of the poll.
- d) If the resignation is withdrawn the period between the dates of resignation and reappointment will subsequently be granted as leave without pay or the teacher may elect to be paid extended leave, if due, for the whole or part of the above period.
- e) For more details see [C2018-04-PSCC2018-06 – Contesting Elections](#).

### 4.11.16 Private business

- a) Leave of absence will not be granted for private business except in very urgent cases. If leave is granted it is without pay.
- b) Applications for leave should be forwarded as early as possible and the nature of the business

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must be stated in support of the application.

### 4.11.17 Sporting fixtures

- a) Various categories of leave, including leave without pay may be granted to teachers to participate in sporting fixtures.
- b) See Section 4.10, Leave for Sporting Fixtures for details.

### 4.11.18 Sporting, cultural or educational association meetings

Where a teacher holds office in a recognised sporting, cultural or educational association either at the State or National level, and is required by that association to attend regular meetings during normal school hours, then leave without pay or extended leave to credit may be granted provided that:

- the State or National body on which the teacher holds office is the controlling body and is not an affiliated group;
- applications for leave are accompanied by documentary evidence verifying the necessity for holding the meeting during school hours.

### 4.11.19 Subpoenaed or called as witnesses

- a) Teachers subpoenaed or called as witnesses, other than by the Crown, shall be granted leave without pay or extended leave to credit for the period they are necessarily absent from duty.
- b) Any monies paid to a teacher as a witness may be retained.
- c) Teachers subpoenaed or called as a witness in their official capacity are deemed to be on duty.
- d) Teachers subpoenaed or called as a witness by the Crown shall be granted special leave. See Section 4.14.23, Special Leave for details.

### 4.11.20 NSW Teachers Federation

#### 4.11.20.1 Appointment to administrative positions

The following conditions apply to teachers elected to full time administrative positions with the NSW Teachers Federation:

- a) Leave Without Pay
  - i) A teacher may be granted a maximum of six years leave without pay to accept an administrative position with the Federation.

The six years limit refers to a single period of service and is not cumulative. This would be extended, in the instance of an officer being elected at a by-election after the beginning of a triennial term of office, for the balance of that triennial period.
  - ii) Approval of applications for leave without pay to accept an administrative position with the Federation will be determined centrally through Industrial Relations Directorate following consultation with principals.
  - iii) Teachers granted leave without pay to accept an administrative position with the Teachers Federation will lose right of return to their substantive position. If they choose to return to teaching they will be matched to a position through a central appointment.
  - iv) Leave without pay granted to accept an administrative position will be regarded as distinct and separate from other types of leave without pay such as leave without



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pay for personal reasons or leave to relieve as a Federation officer.

- v) Leave without pay granted for this purpose will count for incremental progression on resumption of duty in the teaching service.
- vi) A teacher who accepts an administrative position with the Federation for more than six consecutive years must resign from the Teaching Service. This would be extended, in the instance of an officer being elected at a by-election after the beginning of a triennial term of office, for the balance of that triennial period.
- vii) Leave without pay for personal reasons to continue as an officer in the Federation will not be approved.

### b) Superannuation Contributions

As the Federation is an employer in accordance with Schedule 111 of the *State Superannuation Act 1916*, the Federation will be responsible for payment of at least the employer's current liability for superannuation contributions throughout the total period of the teacher's leave without pay.

### c) Application for re-appointment by teachers defeated at election

- i) Teachers granted leave without pay who seek election but are defeated or who do not seek re-election must apply to return to schools and must make application for reappointment as soon as possible. For this purpose the six year limit will be flexible to allow sufficient time for notification of election results and the timing of the teacher's return to duty.
- ii) A teacher in the above situation who does not wish to immediately return to the Teaching Service may seek leave without pay for personal reasons (if they have sufficient leave to credit) providing this meets departmental convenience. Applications for leave should be submitted to the Employee Service Centre.
- iii) In line with current policy concerning teachers who are granted leave without pay for personal reasons, teachers on leave without pay elected to administrative positions with the Teachers Federation who are seeking re-appointment with the Department will be guaranteed an appointment at the expiration of the leave without pay subject to the availability of a suitable position.

### d) Extended leave

- i) Where a teacher is granted leave without pay to accept an administrative position with the Federation, the leave will not initially count for extended leave purposes.
- ii) In the case of teachers who return to the Teaching Service at the expiration of this leave, the Federation will be responsible for meeting the full (or pro rata cost for teachers with less than ten years) cost of the extended leave accrued during the period of leave without pay. The cost will be calculated at the salary rate applicable at the time of the teacher's return to the Teaching Service. The period of leave without pay will then be counted as service for extended leave purposes.

This provision will not apply for any period of leave without pay for personal reasons approved as per c) ii) above.

- iii) In the case of teachers who resign or retire during or at the expiration of the period of leave without pay with the Federation, no recoup will be carried out and the Federation will be responsible for making payment direct to the officer for the extended leave accrued during the period of leave without pay.
- iv) A teacher who retires or resigns during or at the expiration of the period of leave without pay with the Federation will be paid any extended leave for service with the

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Department at the salary rate which would have been paid by the Department had the officer remained a teacher.

- v) A teacher's incremental salary on retirement or resignation will be adjusted if the period of leave without pay with the Federation would in itself have led to incremental salary progression. The teacher will need to resume duty to be eligible for the salary increment, and extended leave entitlements will be paid in accordance with the increased salary.
  - vi) In the case of teachers who resign with more than five but less than ten years' service with the Department, the teacher will receive payment for pro rata extended leave calculated in accordance with Section 4.7.2.
- e) Deferred superannuation liability following retirement or medical retirement while on leave without pay
- For contributors to the State Superannuation Scheme, the deferred superannuation will be accepted by the Department except where:
- the salary paid by the Federation is greater than the salary which would have been paid by the Department had the officer remained a teacher, the Federation will meet that part of the deferred liability which is referable to the difference; and/or
  - a teacher has worked for twelve years or more (two separate six year terms) and any relevant by-election term with the Federation, the deferred liability will be apportioned between the Department and the Federation according to the time spent working with each.
- f) Federation officers who previously resigned from the Teaching Service
- i) Previous teachers of the Department who have resigned from the Teaching Service to accept an administrative position with the Federation will be guaranteed an offer of employment with the Department following the Federation elections in which the officer failed to be re-elected to office or did not stand for re-election subject to the availability of a suitable non executive position.
  - ii) In the case of teachers who previously resigned from the Teaching Service and are employed by the Federation, the Department will not accept any liability for payment of deferred superannuation contributions following the retirement of Federation officers.

### 4.11.20.2 Appointment to relief positions with the NSW Teachers Federation

The following conditions apply to teachers appointed to relief positions with the NSW Teachers Federation.

- a) Teachers released to work in relief positions may be granted leave without pay and must submit an application. Such leave will be regarded as separate from leave without pay granted to teachers to take up full time administrative positions.
- b) In respect of contributors to a state government superannuation fund, the current liability superannuation contributions will be paid by the Teachers Federation.
- c) The period of leave will count for incremental purposes.
- d) Payment of salary and conditions of employment, including leave entitlements will be the responsibility of the Teachers Federation.
- e) A period of leave without pay of less than six months will count as service for extended leave purposes when a teacher has completed at least ten years paid service.

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- f) Teachers will have right of return to their former position following the expiration of the leave granted, at the beginning of the ensuing term within that school year or at the beginning of the next school year as appropriate.
- g) Teachers will not have right of return to their former position if a period of leave or an extension of leave extends beyond the beginning of the following school year.

### 4.11.21 Australian Education Union

- a) The conditions regarding appointment to an administrative position with the Australian Education Union are the same as for the NSW Teachers Federation except for the provisions in respect of superannuation and extended leave.
- b) The Australian Education Union is not an “Employer” for the purposes of the State Superannuation Act. Consequently teachers appointed to an administrative position with the Australian Education Union must make their own arrangements for payment of personal and employer’s current liability superannuation contributions to the appropriate fund.
- c) The period of absence does not count for extended leave purposes.

### 4.11.22 Transport stoppages

- a) During a major interruption to public transport it is expected that, as far as practicable, teachers will report for duty at their usual school.
- b) Where it is impracticable for teachers to report to their normal schools they may report for duty to schools more convenient to their home. In this instance teachers are deemed to be on duty but must supply their principals with a certification from the other school which includes the specific dates upon which they reported for duty.
- c) If a teacher is unable to attend their own or another school they must be granted leave without pay or extended leave to credit.

### 4.11.23 Weddings and wedding anniversaries

- a) A teacher may be granted leave without pay for the wedding of a son, daughter, brother, sister or marriage of a parent.
- b) Leave for weddings of relatives other than a teacher’s son, daughter, brother, sister or parent will be granted, without pay, only in exceptional circumstances.
- c) Where family and community service leave has been exhausted, leave without pay for one day may be granted to attend silver, golden, or diamond wedding anniversaries of parents.
- d) Leave without pay beyond one day may be granted where travel to the place of the wedding or anniversary necessitates additional absence.

### 4.11.24 Part time leave without pay

#### 4.11.24.1 Eligibility

All permanent teachers who have completed the equivalent of two years full time service are eligible to apply for part time leave without pay.

#### 4.11.24.2 Duration of leave and right of return

- a) Part time leave without pay is available for periods of up to two years after which a teacher must either:
  - i) resume duty in a full time position; or

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- ii) seek a change in status to permanent part time work; or
  - iii) apply for further extensions of part time leave without pay beyond the initial two year period, subject to Departmental approval.
- b) Teachers on part time leave without pay will have right of return to their former position for the duration of the period of leave.

### 4.11.24.3 Application and variation

- a) Application for part time leave without pay should be made no later than four weeks prior to the commencement of the leave. However, where leave is sought to commence immediately after a school vacation, the application for leave should be submitted no later than four weeks prior to the last day of the relevant school term. Leave must be taken in fractions of a day ie quarter, half, three quarters of a day or a full day and leave days indicated on the application.
- b) A minimum of 0.4 equivalent full time must be worked on a set and regular basis each week.
- c) A teacher may apply for variation in leave and/or work arrangements at the end of the school year, subject to Departmental approval.
- d) Teachers may apply to resume full time employment in their previous positions by giving one month's notice in writing. Consideration of requests of this nature will take into account whether a replacement teacher has been engaged.

### 4.11.24.4 Other conditions

- a) Salary, leave and allowances including locality and climatic allowances will be calculated on a similar basis as for permanent part time work.
- b) Subject to the normal provisions, teachers on part time leave without pay are entitled to paid maternity, altruistic surrogacy, parental or adoption leave as follows:
  - i) Where the period of part time leave without pay preceding maternity, altruistic surrogacy, parental or adoption leave is 40 calendar weeks or less, this paid leave shall be granted at the teacher's full time rate of pay;
  - ii) Where the period of part time leave without pay preceding maternity, altruistic surrogacy, parental or adoption leave exceeds 40 weeks, this paid leave shall be granted at the teacher's part time rate of pay.
- c) Eligibility for transfer and benefit under the *Transferred Officers' Compensation Determination* will be the same as for full time teachers.
- d) Any teacher who applies for part time leave without pay and whose application is rejected at the school level has right of appeal to the director educational leadership.

### 4.11.24.5 Vacation entitlement

A teacher on part time leave without pay is entitled to pro rata vacation payment on the same basis as a permanent part time teacher.

### 4.11.24.6 Casual or temporary teaching

Teachers on part time leave without pay may undertake casual or temporary teaching. See Section 4.11.4 and 4.11.5 for details.

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### 4.12 Military leave

#### 4.12.1 Sources of authority:

- [Defence Reserve Service \(Protection\) Act 2001](#)
- [Department of Education – Military Leave Guidelines](#)
- [Department of Premier and Cabinet – Circular 2006-25 Military Leave – Defence Reserve Service \(Protection\) Act 2001](#)

Military leave is granted to teachers who are volunteer members of the Defence Forces Reserves. Such leave shall not apply to attendance after working hours.

#### 4.12.2 Entitlement

##### 4.12.2.1 Annual grant entitlements

In any period of twelve months commencing on 1 July each year the following entitlements shall apply:

- a) For attendance at annual training:
  - for members of the Navy Reserve - thirteen (13) working days on full pay;
  - for members of the Army Reserve - fourteen (14) working days on full pay;
  - for members of the Air Force Reserve - sixteen (16) working days on full pay.
- b) For attendance at a school, class or course of instruction:
  - for members of the Navy Reserve – thirteen (13) working days on full pay;
  - for members of the Army Reserve – fourteen (14) working days on full pay;
  - for members of the Air Force Reserve - sixteen (16) working days on full pay.

##### 4.12.2.2 Leave in addition to annual grant

- a) Where additional military leave is required for a member of the Reserve Forces to attend training or instruction for a period that exceeds the leave normally available as military leave or to render ordinary defence Reserve service, teachers may be granted further military leave.
- b) Payment shall be at the difference between the teacher's normal salary and military pay to which the teacher is entitled – top up pay.
- c) Alternatively teachers may chose to take extended leave rather than *Top up pay*.

##### 4.12.2.3 Leave for other defence service

If it is essential for a member of the Reserves to provide full time or part time defence service for reasons other than those listed in the annual entitlement section, teachers will be granted leave without pay.

#### 4.12.3 Evidence of attendance

- a) Leave applications must be supported by evidence of membership of the Reserves and the necessity for the leave. These applications must be provided on the Australian Defence Force Notice of approved service form AE380 (Part A) prior to the leave being taken.
- b) Where requested by the principal, the AE380 form (Part B) must also be provided after the period of leave to confirm that the Reserve service has been completed.
- c) Where leave is to be granted at the difference between normal salary and military pay, a payslip verifying the amount of military payments received, must be submitted to the HR Shared Services.
- d) It is the responsibility of the Reservist to provide the above documentation. Until such time as

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the AE380 form is provided for applications of paid military leave and military leave with top up pay, Reservists will be granted leave without pay pending receipt of the required documentation.

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### 4.13 Sick leave

Source of authority: [Determination No 4 of 2016 - sick leave](#)

#### 4.13.1 General entitlements

- a) All full time permanent teachers shall accrue fifteen (15) days paid sick leave per annum over the course of a year.
- b) The entitlement is fully cumulative with the balance at 31 December each year rolled into the entitlement for the following year.
- c) Permanent part time teachers and temporary teachers shall be entitled to sick leave on a pro rata basis proportionate to the entitlement of a permanent full time teacher.
- d) On first appointment as a permanent or temporary teacher, a teacher with no prior temporary or permanent service with the Department will be granted five (5) days credit to the teacher's sick leave balance.

After the first four (4) months employment a teacher shall accrue sick leave at the rate of fifteen (15) working days per year of service.

- e) A teacher who commences their first appointment or first temporary engagement with the Department may be entitled to additional sick leave up to a maximum of fifteen (15) additional days over the first two years of their first appointment provided that the:
  - i. teacher's principal/supervisor (or their nominee) certifies that there are no current concerns with the teacher's use of their sick leave; and
  - ii. teacher has exhausted all sick leave entitlements to date.
- f) Teachers who are re-employed after resignation are entitled to access a cumulative sick leave entitlement they may have accrued from their prior service with the Department but will not be granted additional sick leave as provided in e) above.
- g) To be eligible for sick leave a temporary teacher must have signed a temporary engagement notice and have entered on duty. Sick leave will only be granted within a period of a temporary engagement where the teacher has already entered on duty.
- h) Payment for sick leave is subject to the teacher:
  - i. informing their manager as soon as reasonably practicable that they are unable to perform duty because of illness. This must be done as close to the staff member's starting time as possible; and
  - ii. providing evidence of illness as soon as practicable if required by clause 4.13.4
- i) Sick Leave will be granted where treatment by a treating doctor (medical health practitioner such as GP or specialist) is required during school hours. Appointments for treatment by other health practitioners (refer 4.13.4 b) should be made outside school hours.
- j) Sick leave will only be granted for an absence during school hours where urgent treatment by such health practitioner is required to relieve pain. For example sick leave to see a dentist would only be provided where urgent treatment was required to relieve pain.

#### 4.13.2 Special sick leave

- a) Special sick leave may be granted to a teacher with at least ten (10) years' service who has exhausted all sick leave entitlements and who because of illness has been or will be absent from duty for a period of at least three (3) months. For the purpose of this section the three months are calendar months inclusive of student vacation periods.

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- b) Special sick leave may be granted to a full time permanent teacher on the basis of 22 additional working days for each completed ten years of service as follows:

Completed years of service	Entitlement
10 years and less than 20 years	22 days
20 years and less than 30 years	44 days
30 years and less than 40 years	66 days
40 years and over	88 days

- c) Special sick leave is a separate entitlement and is not taken into account when calculating a teacher's normal sick leave entitlement.

### 4.13.3 Sick leave for ex-service personnel

- a) Teachers who are ex-service personnel and who have an accepted war-caused disability may be granted 40 days sick leave on full pay in any period of twelve months.
- b) This provision does not apply, if, during a teacher's service, they have been granted sick leave at full pay exceeding the amount provided by the following formula: years of service x 20
- c) The additional annual entitlement of 40 days per calendar year is non-cumulative. This is an additional grant of leave to be applied only to absences directly related to an accepted war caused disability and is separate from the annual sick leave or special sick leave entitlement.
- d) Provision also exists for ex-service personnel who have exhausted all available full pay sick leave, and who are in receipt of a war disability pension and/or war disability sustenance allowance, to be granted additional leave without pay. Payment for this leave is the difference between the pension and/or allowance and normal salary on the following basis:

Completed Years of Service	Entitlement
Less than 10 years	66 days
10 years and less than 30 years	132 days
20 years and less than 40 years	198 days
30 years and over	264 days

- e) To be eligible for the above entitlements teachers must provide a statement from the Department of Veteran's Affairs to the effect that the illness or injury is a result of service in a Recognised War Zone and service was with the armed forces of the Commonwealth of Australia.

### 4.13.4 Application and medical certificates

- a) Where a teacher applies for a period of sick leave of three (3) days or less it is generally not necessary to state the nature of the illness. When completing the leave application, teachers may indicate "sick" in the appropriate section.
- b) Applications for sick leave exceeding three (3) days must be supported by a certificate stating the nature of the illness and the period that the teacher is unfit for duty. The certificate would most commonly be from a registered medical practitioner however a certificate issued by other health practitioners may cover absences of up to five (5) days where special circumstances are indicated in the certificate. In any case, absences in excess of five (5) days shall be supported by a certificate from a medical practitioner.

In accordance with the [Health Practitioner Regulation National Law \(NSW\)](#), a health practitioner means an individual who practices the following professions or speciality it



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contains:

- chiropractic;
  - dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
  - medical;
  - nursing and midwifery;
  - optometry;
  - osteopathy;
  - pharmacy;
  - physiotherapy;
  - podiatry;
  - psychology
  - Aboriginal and Torres Strait Islander health practice; or
  - Chinese medicine; or
  - medical radiation practice; or
  - occupational therapy.
- c) Where a teacher's leave record is considered to be unsatisfactory, a medical certificate may be required for every absence or for absences of less than three (3) days.
- d) Should a teacher wish to keep the nature of the illness confidential, the medical certificate/s can be reviewed by a nominated medical assessor from Sonic Health Plus Pty Ltd (one of the NSW Government agencies medical assessment providers).

The employee is required to complete the '[Independent Review of Medical Certificate](#)' Form and attach the relevant medical certificate/s. The documents should be placed in an envelope marked 'Confidential' and sent to the address on the bottom of this form – email to [shp.specialists@sonichealthplus.com.au](mailto:shp.specialists@sonichealthplus.com.au) or send via post to GPO Box 9821 Sydney NSW 2001. .

The Manager, Health and Safety Corporate Support from the Health and Safety Directorate (or a delegate) will be advised by the assessor whether a valid medical certificate has been provided.

- e) A teacher who is absent on a long period of sick leave or who has a limited sick leave entitlement should ensure that a leave application complete with a doctor's certificate is submitted promptly. This will reduce the likelihood of a serious overpayment occurring. Where the absence is ongoing, leave applications and doctor's certificates should be submitted on a regular basis. Advising the school by telephone is not sufficient to avoid overpayments.
- f) Sick leave on a part time basis will only be considered in connection with departmentally approved rehabilitation programs and will be subject to regular review.

### 4.13.5 Sick leave and vacation payments

- a) A teacher's vacation pay entitlement is not affected where a teacher is absent on paid sick leave.
- b) Sick leave without pay not exceeding twenty (20) days (as aggregated in any school year) will count as service for the accrual of vacation payments, irrespective of when the twenty days sick leave without pay are taken
- c) Sick leave without pay in excess of twenty (20) days in a school year reduces vacation payments on a pro rata basis.

### 4.13.6 Sick leave while on extended leave

- a) A teacher who becomes ill while on extended leave and who has sick leave to credit, may

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apply to have the extended leave recredited. To be eligible for a recredit of extended leave the teacher must have been ill for at least a period of five (5) continuous working days. The five (5) day period must occur during the extended leave.

- b) The application must be accompanied by a medical certificate stating the nature and duration of the illness.
- c) These provisions do not apply to teachers on extended leave prior to resignation or termination of services but they do apply to teachers on extended leave prior to retirement.

### 4.13.7 Sick leave without pay

Where all paid sick leave entitlements for which a teacher is eligible have been exhausted the teacher may:

- a) elect to take available extended leave concurrent with no pay sick leave; or
- b) be granted sick leave without pay.

A teacher who is on sick leave without pay may be eligible for Commonwealth sickness benefits and should contact Centrelink regarding entitlements.

Sick leave without pay will count as service for the accrual of paid sick leave.

### 4.13.8 Sick leave prior to maternity leave

- a) A teacher may be granted available paid sick leave, sick leave without pay or extended leave if, because of a complication associated with the pregnancy including a history of miscarriages or other illness, the teacher is unable to continue to work.
- b) If a teacher is entitled to paid maternity leave, sick leave must cease no later than the day prior to the anticipated date of birth.
- c) If a teacher is not entitled to paid maternity leave, available sick leave may be granted until the anticipated date of birth. Unpaid maternity leave is granted on and from the anticipated date of birth.

### 4.13.9 Sick leave following a period of unpaid adoption, maternity, altruistic surrogacy, parental or adoption leave

A teacher returning from a period of unpaid adoption, maternity, altruistic surrogacy or parental leave, may be entitled to additional sick leave up to a maximum of 5 additional days during the first year of their return provided that:

- a) the teacher has resumed duty; and
- b) the teacher has exhausted all sick leave entitlements to date.

### 4.13.10 Sick leave prior to resignation or retirement

If a teacher has submitted notice of resignation or retirement to take effect from a specific date and is absent on sick leave up to and including that date, the application for leave must be accompanied by a medical certificate

### 4.13.11 Sick leave to attend in vitro fertilisation programs

- a) Sick leave in accordance with a teacher's entitlement is available in circumstances where, as a result of treatment administered under an In vitro Fertilisation Program, the teacher is unable to attend work. An application for leave in these circumstances should be supported by a medical certificate.
- b) Teachers may be granted leave without pay or extended leave to credit to cover other

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absences in connection with attendance at In vitro Fertilisation Programs.

### 4.13.12 Medical examinations

- a) As a general rule teachers will be referred for a medical examination where a teacher is on sick leave for a continuous period of six (6) months or more, or where a medical certificate is submitted covering a period in which a teacher's sick leave with pay will cease and the medical condition is such that it is highly unlikely that the teacher will be able to continue in the Teaching Service. This may include absences on part time sick leave or rehabilitation programs.
- b) Teachers suffering from a serious illness and whose medical practitioner recommends medical retirement, may request that a medical examination be arranged in order to determine their fitness to continue in employment.
- c) In accordance with [Teaching Service Regulation 2017](#) Clause 10 Medical Examinations, for the purpose of ascertaining the fitness of a teacher to perform their duties the Secretary may direct the teacher to submit to a medical examination by a qualified medical practitioner selected by the Secretary.

The teacher must comply with the direction. If the Secretary has issued any such direction to a teacher the Secretary may also direct the teacher to:

- i) if on duty, to cease immediately, and
- ii) not to resume duty until the medical examination is complete and the medical practitioner concerned has furnished a certificate stating that the teacher is fit for work.

### 4.13.13 Workers' compensation

- a) An application for workers' compensation must be accompanied by an application for sick leave and irrespective of the period of absence must be supported by a SafeWork NSW medical certificate.
- b) See Section 4.16 Workers' Compensation for details.

### 4.13.14 Damages and compensation claims - other than workers' compensation

Where the circumstances of an injury or illness may give right to a claim for damages or compensation not under the [Workers Compensation Act 1987](#), a teacher may be granted sick leave on condition that they sign an undertaking to reimburse the Department the monetary value of any sick leave granted in the event that the action is successful.

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### 4.14 Special leave

#### 4.14.1 General

- a) Special leave is a category of full pay leave available to teachers. It covers activities which are not regarded as being on duty but which are not covered by other forms of leave.
- b) Where appropriate, applications for special leave should be accompanied by documentation verifying the teacher's involvement in the particular activity or organisation.

#### 4.14.2 Entitlement

- a) Each circumstance has specific rules which determine the entitlement and where applicable, the duration of special leave that may be granted.
- b) In some instances, for example jury service, the amount of leave that may be granted has no upper limit and in other instances there are annual limits applicable to the particular circumstances.

#### 4.14.3 Annual conferences or meetings

- a) Teachers may be granted special leave for the duration of the conference or meeting, plus reasonable travelling time to permit attendance at annual conferences or meetings in the following circumstances:
  - i) State Emergency Services Annual Conference as deputy division controllers and/or sub-division controllers;
  - ii) Annual Conference of the Federation of Parents and Citizens Associations or the Annual Conference of the Federation of School Community Organisations as representative delegates;
  - iii) National Red Cross Executive Council compulsory meetings;
  - iv) Annual Conference of the Returned Services League of Australia as a delegate of a sub-branch;
  - v) NSW Local Government Council.

#### 4.14.4 Bone marrow donors

- a) Teachers who have registered and are selected to donate bone marrow may be granted special leave when the procedure cannot be carried out outside school hours or during school vacations.
- b) The maximum period of leave is five days special leave with pay and a medical certificate must accompany the application for leave.

#### 4.14.5 Court attendance as interpreter

Subject to departmental convenience, teachers may be granted special leave when required to assist in official interpreting at courts. Teachers may retain the interpreter's fee.

#### 4.14.6 Electoral returning officers

Teachers who are Electoral Returning Officers may be granted special leave in the following circumstances:

- i) For contested elections or a referendum - up to seven weeks special leave from

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the date of issue of the writs until three weeks after polling day. Requests for additional leave are to be referred to the Director, Shared Services Human Resources.

- ii) For uncontested elections - sufficient special leave to complete the necessary formalities.
- iii) To visit schools to conduct campaigns of electoral education in line with the Premier's wishes - special leave for visit plus travelling time.

### 4.14.7 Duke of Edinburgh awards

Up to two days special leave may be granted to teachers to attend rehearsals and/or presentation of Duke of Edinburgh Awards.

### 4.14.8 Examination leave

- a) Special leave to a maximum of five days per year may be granted to teachers enrolled in approved tertiary courses to attend a terminal examination.
- b) "Approved tertiary courses" are defined as courses of study of value to teachers professionally which may be undertaken at a university or TAFE college in New South Wales or the Australian Capital Territory.
- c) "A terminal examination" is defined as:
  - an examination which occurs at the end of a subject and must be passed for the subject to be completed; or
  - an examination which occurs during a course and forms an integral part of the major examination or final assessment in a subject which must be taken in order to pass the subject in that academic period.
- d) These conditions also apply to attendance at deferred examinations and examinations in respect of repeat studies.

### 4.14.9 Pre-examination leave

Teachers enrolled in approved tertiary courses may also be granted up to five days pre-examination leave as follows:

Morning examination : no pre-examination leave

Afternoon examination : half day pre-examination leave on the morning of the same day

Evening examination : half day pre-examination on the afternoon of the same day

### 4.14.10 Application and approval of leave

- a) Principals have authority to grant examination and pre-examination leave in accordance with the above provisions. Formal applications for leave do not need to be submitted as principals may approve leave on production of the examination timetable.
- b) In respect of teachers wishing to attend examinations arranged by institutions other than a university or TAFE college in New South Wales or the Australian Capital Territory, formal applications for leave must be submitted and accompanied by all relevant documentation.

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### 4.14.11 Ex-armed services personnel

Ex-armed services personnel may be granted up to 6½ days special leave in any period of twelve months for the following purposes:

- to attend a hospital or visit a medical officer for review;
- to attend a hospital to report for periodical examination or attention in connection with a war caused disability;
- to attend limb factories for the supply, renewal or repair of article replacements or surgical appliances; or
- to attend the Department of Veterans' Affairs in connection with claims made for military pensions.

### 4.14.12 Graduation ceremonies

- a) Teachers may be granted special leave for a maximum of one day for the minimum time necessary for attendance at a graduation ceremony for the award of a degree or diploma from a recognised tertiary institution.

Teachers in isolated locations who require additional time to travel to and from a graduation ceremony, may be granted family and community service leave to credit for the reasonable time necessary for travel.

- b) Where relief is not available, the closure of a one teacher school for one day will be permitted to allow the teacher to attend a graduation ceremony.

### 4.14.13 Jury service

- a) Teachers who receive a jury summons should advise their principal of the details.
- b) A teacher who attends court in answer to a jury summons may be granted special leave for the time they are necessarily absent.
- c) A certificate of attendance or other documentation setting out attendance and detailing payments made must be obtained from the Sheriff or the Registrar of the court.
- d) Teachers can only claim out of pocket expenses.
- e) A teacher who attends court but is not empanelled for jury service is obliged to report for duty where practicable, even for part of the day. In these circumstances teachers should telephone the principal and indicate that they are returning to school.
- f) Applications for leave must be accompanied by the Sheriff's certificate, otherwise leave will be granted without pay.
- g) A teacher who serves on a jury during a school vacation or other approved leave is not eligible for compensatory leave or a recredit of approved leave. The certificate of attendance is not required.

#### Exemption from jury service

- a) A teacher who is summoned for jury duty at a time which would educationally disadvantage pupils or cause other severe hardship may apply to the Sheriff of NSW to be excused from jury service.
- b) Application, in the form of a statutory declaration accompanied by a letter of support from the principal and the summons for jury service, should be submitted to the Sheriff immediately following receipt of the jury service notice.

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### 4.14.14 Local government activities

- a) Teachers who hold the civic office of mayor of a municipal council, president of a shire council or chairperson of a county council may be granted up to ten days special leave in any period of twelve months, not cumulative, to meet those commitments of office which occur in school hours.
- b) Teachers who hold civic office other than those above may be granted three days special leave in any period of twelve months, not cumulative.

### 4.14.15 Medical examination for permanent appointment

- a) Teachers in country centres may be granted special leave for the time they are necessarily absent from duty where they are required to travel to another town for a medical examination for permanent appointment.
- b) In the metropolitan area and other centres where travel to another town is not necessary, teachers are deemed to be on duty for the minimum time necessary to attend the medical examination and return to duty.
- c) Where a teacher is not already on approved leave and is attending a medical examination for fitness to continue, the above provisions will apply.

### 4.14.16 Members of statutory boards and authorities

- a) Teachers may be granted special leave for attendance at regular meetings of a specified statutory board or authority of which the teacher is a member on the following basis:
  - up to three days in any period of twelve months, not cumulative, if a teacher is a member of one specified statutory board or authority;
  - up to five days in any period of twelve months, not cumulative, if a teacher is a member of more than one specified statutory board or authority;
- b) Teachers who attend meetings of statutory boards or authorities which come within the Education portfolio, for example the NSW Education Standards Authority Board, will be deemed to be on duty and do not have to apply for leave of absence.
- c) Teachers appointed as board members of the NSW Teachers Mutual Bank or Directors of the Teachers Federation Health Limited board may be granted special leave for one half day per month to attend board meetings that are held during school terms.

The NSW Teachers Mutual Bank or Teachers Federation Health Limited, as appropriate, is responsible for payment of replacement teacher costs associated with this leave.

### 4.14.17 Political exchange program

Teachers who are selected to participate in the Political Exchange Program under the Multi-Party Commonwealth Government Committee may be granted special leave for the duration of the program plus reasonable travelling time.

### 4.14.18 National Aborigines' and Islanders' Observance Committee (NAIDOC) week

Teachers who identify as Aborigines may be granted up to one day special leave so that they may participate in NAIDOC Week celebrations.

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### 4.14.19 Professional or learned societies

- a) Applications for special leave for the attendance at conferences or meetings which are of professional interest to teachers will only be considered in special circumstances.
- b) Applications for special leave should be submitted at least one month in advance and should be accompanied by appropriate documentation regarding the conference or meeting.
- c) In respect of applications for special leave where overseas travel is involved it is essential that the prior approval of the Minister for Education is obtained. In this instance it is therefore necessary for applications to be submitted at least ten weeks prior to the proposed departure date.

### 4.14.20 School camping programs

- a) Visiting teachers who attend school camps organised in association with the NSW Government Office of Sport may be granted two days special leave if they attend a camp of seven days duration or longer. This leave is to compensate the teacher for being on duty during a weekend.
- b) If the camp is of five days duration or longer and a teacher is on duty on a public holiday, special leave for one day may be granted.
- c) Leave should be taken within a reasonable time after the camp and at a time convenient to the teacher's school.

### 4.14.21 Sporting fixtures

- a) In some instances special leave may be granted to teachers selected to represent a State or Australia as a competitor, coach, team manager or official in a major amateur sport.
- b) See Section 4.10, Leave for Sporting Fixtures for details.

### 4.14.22 State emergencies

- a) Emergency Services Organisations are those described in the *State Emergency and Rescue Management Act 1989* as outlined below:
  - i. Ambulance Service of NSW;
  - ii. Fire and Rescue NSW;
  - iii. A fire brigade within the meaning of the *Fire and Rescue NSW Act 1989*;
  - iv. NSW Police Force;
  - v. NSW Rural Fire Service;
  - vi. State Emergency Service;
  - vii. Surf Life Saving New South Wales;
  - viii. New South Wales Volunteer Rescue Association Inc.; and
  - ix. Volunteer Marine Rescue NSW.
- b) Courses of Training
  - i) Teachers selected as departmental representatives to attend emergency services training courses or lectures are regarded as being on duty.
  - ii) Teachers who are members of Emergency Services Organisations who are nominated by those organisations may be granted up to ten days special leave in any period of twelve months to attend training courses approved by the Emergency Services Organisation. Applications for leave must be accompanied by a copy of approval from the Emergency Services



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Organisation and confirmation of attendance.

- c) Flood, Fire and Other Emergencies
  - i) Teachers who are volunteer members of an Emergency Services Organisation who are asked to serve during emergency operations during normal school hours (based on school operational need) will be regarded as being on duty when engaged in an emergency which occurs during normal working hours.
  - ii) Teachers who volunteer to assist where an emergency is declared under Division 4 of the State Emergency and Rescue Management Act 1989 or under other relevant legislation or by the Minister, may be granted special leave for the time they are absent from duty. Special leave granted during a declared emergency is separate from the five days per annum provided for in iii) below.
  - iii) Teachers who are volunteer members of an Emergency Services Organisation may be granted up to five days special leave per annum when called upon to assist as a volunteer.
- d) Teachers who are called by the Police or emergency services to assist in emergency search and rescue operations may be granted up to five days special leave per annum if they are volunteer members of an Emergency Services Organisation.
- e) Where a teacher remains on emergency duty for several days or assists in a rescue at such time as it would be unreasonable to expect the teacher to report for duty at a normal time, up to one days special leave for rest purposes may be granted.
- f) In the case of an emergency other than a declared emergency, leave for rest purposes is included in the five day limits as set out in c) and d) above.
- g) Proof of Attendance at Emergencies
  - i) A statement must accompany an application for special leave from a District or Regional officer in the relevant Emergency Services Organisation, certifying the times of attendance at emergencies.
  - ii) Details regarding the period and area of attendance together with the name of the organisation of which the teacher is a volunteer member should be outlined on the leave application.

### 4.14.23 Subpoenaed or called as witnesses

- a) Teachers subpoenaed or called as witnesses in their official capacity are deemed to be on duty and do not have to apply for leave of absence.
- b) Teachers, who in their private capacity are subpoenaed or called as witnesses by the Crown, (whether in the right of the State or the Commonwealth) shall be granted special leave for the period they are necessarily absent from duty.
- c) Any witness expenses other than travelling expenses must be repaid to the Department of Education.
- d) Teachers subpoenaed in their private capacity other than by the Crown are granted extended service leave to credit, or leave without pay. For leave without pay see Section 4.11 for details.
- e) A copy of the subpoena should be submitted with the teacher's application for

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leave.

### 4.14.24 Trade union training courses

- a) Teachers may be granted up to twelve days special leave in any period of two years to attend Trade Union Training Courses conducted by Trade Union Training Australia or the NSW Teachers Federation.
- b) An application for leave must be accompanied by a statement from the NSW Teachers Federation verifying nomination to attend the course.

### 4.14.25 Transferred officers

- a) Leave Entitlements Relating to Transfer
  - i) A teacher who receives a transfer to a new locality and qualifies for payment of removal of residence and related expenses by the Department may be eligible for special leave.
  - ii) Transferred officers who are to enter on duty at their new location at other than the beginning of a school term may be granted:
    - up to two days special leave for the purpose of obtaining accommodation at the new location;
    - up to two days special leave for the purpose of preparation and packing of personal and household effects prior to removal or up to two days for the purpose of arranging storage;
    - one day special leave for the purpose of either cleaning the residence being vacated or settling in and occupying the new residence;
    - such special leave as is necessary to travel to the new location for the purpose of commencing duty.
- b) Leave entitlements to return home at weekends
  - i) Provided suitable arrangements can be made for the performance of their duties, teachers who have been transferred at the Department's expense but are unable to secure accommodation for their families at their new headquarters may be granted special leave. This leave is to permit teachers to return home at weekends once each month and spend two consecutive days and nights with their families. An additional day and night stay with their families is also available in respect of each public holiday which occurs in conjunction with such weekends.
  - ii) Special leave is limited to the time necessarily required in travelling on the day preceding a weekend or long weekend as the case may be.

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### 4.15 Study leave

#### 4.15.1 General

Applications for study leave are subject to the following principles:

- Permanent and temporary teachers applying for full time study leave must have completed two years of full time continuous service or the equivalent part time.
- Study leave will only be granted to undertake courses that are either highly relevant to a teacher's professional development or of particular value to the Department.
- As study leave will only be granted at the Department's discretion and with the approval of a teacher's principal, enrolment in courses should not be undertaken in anticipation of leave being granted.

#### 4.15.2 Study Leave Without Pay to Accept an Award or Study Full Time

Principals may approve leave without pay for teachers awarded a scholarship or teachers who enrol in full time studies at a tertiary institution under the following conditions:

- a) for study which is relevant to the teacher's professional development or of value to the Department;
- b) in the case of a teacher being awarded a scholarship: for the period of the award plus, where relevant, travelling time;
- c) where teachers enrol in full time studies at a tertiary institution: for the school year, the academic year or semester;
- d) that there is no major disruption to school operations and the delivery of educational programs and the replacement costs can be met from within the school budget.

#### 4.15.3 Study Leave on Full Pay for Two Hours per Week

Principals may approve study leave on full pay for travelling time and attendance at lectures for up to two hours per week for teachers undertaking tertiary courses. The following conditions apply:

- the course is relevant to the teacher's professional development;
- the course is not available outside school hours;
- the maximum period of leave including travelling time must not exceed two hours per week;
- teaching time, while absent on leave, does not have to be made up;

#### 4.15.4 Study Leave for External (e.g. online/distance education courses) and Evening Studies

Principals may approve up to five days study leave per year for teachers enrolled in external or evening courses of study relevant to the teacher's professional development. The following conditions apply:

- a) teachers enrolled in postgraduate studies or a second degree related to a teacher's professional development may be granted study leave without pay for up to five days per year;
- b) in addition, leave without pay or long service leave to credit may be granted where leave in excess of five days is required.
- c) this leave is available:
  - for travel and attendance at compulsory residential schools;

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- to meet other compulsory course requirements such as field excursions, case studies, study visits and practical work;

Examination leave, pre-examination leave and leave to attend graduation ceremonies may also be available under the 'special leave' category.

### 4.16 Workers' compensation leave

#### 4.16.1 General

Teachers must report all workplace incidents, injuries, illnesses or health conditions as soon as possible and within 24 hours to the Department's Incident Report and Support Hotline on 1800 811 523. Delay in notification can impact on the payment of workers compensation benefits resulting in overpayment. Incidents and injuries are reported in accordance with the [Incident Notification & Response Procedures](#).

The Department's Fund Manager administers the Department's claims and determine liability for workplace injuries on its behalf.

For a work-related injury or illness, workers' compensation legislation may include income support in the form of weekly payments of workers compensation benefits for an accepted workers compensation claim. The Department pays weekly benefits in the form of workers compensation leave (formerly accident leave) upon approval from the Department's Fund Manager based on Pre Injury Average Weekly Earnings (PIAWE).

Teachers should ensure that any absence from the workplace is supported by appropriate sick leave applications made through SAP. In the event the Department has already recorded workers compensation leave against this absence, there is no need to make an additional application for leave.

The Department's [Recovery at Work program](#) outlines the supports available for the management of workplace injuries to ensure teachers with an illness, injury or health condition (injury) are supported in the workplace by:

- Ensuring the injured or ill teacher is provided with information, advice and support early in the process
- Helping the teacher understand the recovery at work process
- Promoting an early, safe and durable recovery at work through the development and implementation of individual recovery at work plans
- Ensuring that all teachers and workplace managers understand and meet their obligations in regards to recovery at work
- Providing information and assistance when determining reasonable adjustments that may be required when teachers require a change to their substantive role

#### 4.16.2 Entitlement

The payment of workers compensation weekly benefits is dependent on the liability status of the teacher's workers compensation claim being accepted. Where liability has not been determined and the teacher is not fit for normal duties, teachers are required to ensure that they have applied for sick leave, or extended leave to cover the period of absence.

##### 4.16.2.1 Leave and Pay Entitlements – First 13 Weeks of Absence

Workers compensation leave (formerly accident leave) is administered to teachers based on their Pre Injury Average Weekly Earnings (PIAWE) in accordance with the *Workers Compensation Act 1987*. PIAWE is paid at a weekly rate of entitlement in accordance with the workers' compensation legislation at a rate of 95% of PIAWE provided that;

- It does not exceed the maximum compensation amount as determined by the legislation
- A valid Medical Certificate of Capacity exists which covers the period of absence.

If there is a shortfall between the maximum payable weekly compensation and normal gross weekly salary, the teacher may use available paid sick leave or extended leave to bridge

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the gap (Top Up).

### 4.16.2.2 Leave and Pay Entitlements – Between 14 -130 Weeks of Absence

When the accumulative absence from work for an injury is more than 26 weeks of weekly workers compensation benefits the use of paid accrued leave to bridge the gap is no longer applicable.

- (1) Workers' compensation leave will be paid at the applicable PIAWE weekly rate of entitlement on the basis that a teacher who has no current work capacity is entitled to receive payments at the rate of 80% of the worker's PIAWE.
- (2) Workers' compensation leave will be paid at the applicable PIAWE weekly rate of entitlement on the basis that a teacher who has current work capacity and has returned to work for not less than 15 hours per week is entitled to receive the lesser of the following rate;
  - (a) 95% of the worker's PIAWE, less the worker's current weekly earnings,
  - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.
- (3) Workers' compensation leave will be paid at the applicable PIAWE weekly rate of entitlement on the basis that a teacher who has current work capacity and has returned to work for less than 15 hours per week is entitled to receive the lesser of the following rate
  - (a) 80% of the worker's PIAWE, less the worker's current weekly earnings,
  - (b) the maximum weekly compensation amount, less the worker's current weekly earnings.

### 4.16.2.3 Leave and Pay Entitlements – After 130 Weeks of Absence

Entitlement to workers compensation weekly benefits after 130 weeks is assessed by the Departments Fund Manager through a work capacity assessment. This assessment of a teacher's entitlement to weekly benefits after 130 weeks must be conducted;

- (a) during the last 52 weeks of the second entitlement period, and
- (b) thereafter at least once every 2 years.
- (c) a worker's entitlement to compensation under this section may be reassessed at any time

The weekly benefits payable for a teacher who is entitled to receive benefits after 130 weeks is to be at the lesser of the following rats;

- (a) 80% of the worker's PIAWE, less the worker's current weekly earnings,
- (b) the maximum weekly compensation amount, less the worker's current weekly earnings.

### 4.16.2.4 Partial Incapacity

The Recovery at Work Program is focused on return to work at the earliest possible stage of recovery, based on work capacity. Where teachers have returned to work but are working less than their pre-injury hours, weekly payments will be paid at the applicable weekly rate of entitlement under workers' compensation legislation.

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### 4.16.2.5 Other Entitlements

The Department's claims manager will pay such medical, hospital and ambulance expenses reasonably incurred by the teacher in connection with the injury or illness. This applies under provisional liability or if liability is accepted.

Teachers should not pay any accounts, nor submit accounts to Medicare or health funds for these services, but forward them directly to the department's claims manager or to the department for referral to the department's claims manager.

For information on what other entitlements may apply contact the Health and Safety Directorate by telephone on 1800 811 523, selecting General Enquiry (Option 6) or review the [Recovery at Work program](#).

### 4.16.3 Annual Leave and Non Attendance During Non Term Weeks

Workers compensation leave does not affect service for the purpose of calculating the payments during non term weeks.

Teachers in receipt of workers compensation benefits during this period will receive payments for annual leave in accordance with *Determination No. 6 of 2016 – Annual Leave and Payment for Non Attendance by Teachers in Non Term Weeks* and workers compensation benefits as determined by the Department's Fund Manager in accordance with the Workers Compensation Act.

Determination No. 6 of 2016 defines the annual leave weeks for teachers. In the Eastern Division annual leave is taken in the first non term calendar week of each of the student vacations and in the Western Division it is taken in the first two calendar weeks of the summer student vacation and the first non term calendar weeks of the other student vacations.

Teachers receiving workers compensation benefits will receive payments during non term week(s) as determined by the Department's Fund Manager in accordance with the Workers Compensation Act

### 4.16.4 Public Holidays

Normal salary entitlements which may include compensation entitlements is paid for public holidays occurring during a period for which workers' compensation has been approved.

### 4.16.5 Incremental Progression

Workers Compensation leave accrues service for incremental salary progression as if the teacher were on duty.

### 4.16.6 Permanent Incapacity

In some cases, medical evidence may indicate a teacher may not recover to a point that would allow for a return to their pre-injury role. Medical retirement is an employment decision to separate a teacher from the department that is based on medical information.

See Chapter 11, Separation from the Service for further details.

### 4.16.7 Rehabilitation and Recovery at Work

The Department's *Recovery at Work: Return to Work Program* outlines the support available to manage health in the workplace. This program also includes the department's approach

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to managing personal health conditions for teachers with an illness, injury or health conditions to support recovery at the workplace.

Most teachers return to work quickly following an injury with support from their manager, treating medical practitioners, the Return to Work Program and the staff within the Health and Safety Directorate.

Recovery at work refers to all the activities that aim to achieve a timely, safe and durable return to work for teachers with a work related or personal injury seeking to recover at work. The process aims to help teachers by taking the most direct pathway to achieving a return to work on full hours and duties where possible. These activities include notification, early intervention, case management, treatment, rehabilitation and return to work planning activities.

### 4.16.8 References and Advice

For further advice, please contact the Health and Safety Directorate by telephone on 1800 811 523, selecting General Enquiry (Option 6).

For further information refer to:

- Workers Compensation Act 1987
- Workplace Injury Management and Worker Compensation Act 1998
- SafeWork NSW's Customer Service Centre on 13 10 50 – provides advice or information regarding safety at work, investigation of a workplace incident or work, health and safety laws
- Worker Compensation Independent Review Office (WIRO) on 13 94 76; provides teachers with help to have their complaints against insurers resolved quickly and fairly
- icare Insurance for NSW on 9216 3829
- State Insurance Regulatory Authority (SIRA) on 13 10 50; provides information on the rights, roles and obligations of everyone working within the workers compensation system