

**DETERMINATION UNDER GOVERNMENT SECTOR
EMPLOYMENT ACT 2013**

DETERMINATION 1 OF 2015

**WAGES AND CONDITIONS OF EMPLOYMENT OF SCHOOL CANTEEN
EMPLOYEES**

I, Michele Bruniges, Secretary, Department of Education make the following determination pursuant to section 25 of the *Government Sector Employment Act 2013*.

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1. APPLICATION

- 1.1. This determination applies to staff employed by the Department of Education (the Department) in NSW Government schools as canteen assistants and canteen supervisors.
- 1.2 This determination does not apply to persons undertaking functions in a canteen in a departmental school:
 - 1.2.1 as a volunteer; or
 - 1.2.2 for a school Parents and Citizens Association; or
 - 1.2.3 as or for a contractor or private canteen operator.

2. DEFINITIONS

- 2.1 “Association” means the “Shop, Distributive and Allied Employees’ Association, New South Wales” and the “Shop Assistants and Warehouse Employees’ Federation of Australia, Newcastle and Northern, New South Wales.
- 2.2 “Canteen assistant” means a person employed as such who assists the canteen supervisor in the day to day operation of the school canteen.
- 2.3 “Canteen supervisor” means a person employed as such who is responsible to the Principal for the day to day operation of the school canteen, including the supervision/rostering of canteen assistants and/or voluntary workers.
- 2.4 “Casual” means a person employed as such in accordance with the relevant provisions of the Government Sector Employment Act.
- 2.5 “Department” means the New South Wales Department of Education.
- 2.6 “Domestic violence” means domestic violence as defined in the *Crimes (Domestic and Personal Violence) Act 2007*.
- 2.7 “Government Sector Employment Act” means the *Government Sector Employment Act 2013*.
- 2.8 “Principal” means a teacher appointed as such to be responsible for the management, organisation, administration, supervision and efficiency of a school and all departments in a school.

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- 2.9 “Secretary” means the Secretary of the Department of Education or nominee.
- 2.10 “Temporary” means a person employed as such in accordance with the relevant provisions of the *Government Sector Employment Act 2013*, *Government Sector Employment Regulations 2014* and the *Government Sector Employment Rules 2014*.
- 2.11 “Staff member” means a temporary employee

3. EMPLOYMENT

3.1 General

- 3.1.1 Staff may be employed as a casual or temporary employee.
- 3.1.2 A temporary employee may be engaged on a full time or part-time basis.
- 3.1.3 Student vacations do not form part of the period of employment provided for in clause 3.1.1 and there is no entitlement to remuneration for temporary employees during the student vacation periods.

3.2 Temporary Part-time Employment

- 3.2.1 A part-time employee is to work contract hours less than full-time hours.
- 3.2.2 Part-time employees receive full time entitlements on a pro rata basis calculated according to the number of hours the employee works in the part-time position. Entitlements to paid leave accrue on the equivalent hourly basis.
- 3.2.3 Part-time employees shall be paid an hourly rate equal to the appropriate weekly rate divided by 38.
- 3.2.4 Ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for full-time employees but shall not, in any case, be less than three hours work per day nor less than nine hours work per week nor more than 30 hours work per week.
- 3.2.4(a) The minimum weekly engagement for all part-time employees employed as at 26 September 1990 shall be 12 hours per week.

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- 3.2.4(b) Where an employee's regular rostered work is in excess of 30 hours per week, then such an employee shall be deemed to be a full-time employee and paid as such.
- 3.2.4(c) Employees employed prior to the first pay period in October 1988 shall work their ordinary hours, except where such employees agree otherwise, as follows:
- 3.2.4(d) The ordinary hours of work, exclusive of meal times, shall be the same as those prescribed for weekly employees but shall not, in any case, be less than 20 hours per week.
- 3.2.5 Save for the meal times prescribed, all time between the actual commencing time and the actual ceasing time on any one day shall count and shall be paid for as time worked.
- 3.2.6 Notwithstanding the provisions of paragraphs 3.2.1 to 3.2.3 of this sub-clause, the Association and the Principal may agree, in writing, to observe other conditions in order to meet special cases.

3.3 Casual Employment

Hours of work

- 3.3.1 A casual employee is engaged and paid on an hourly basis.
- 3.3.2 A casual employee will be engaged and paid for a minimum of 3 consecutive hours for each day worked.
- 3.3.3 Clause 4 – Hours applies to casual employees.

Rate of pay

- 3.3.4 A casual employee shall be paid the ordinary hourly rate of pay equal to the appropriate weekly rate divided by 38.
- 3.3.5 Casual employees shall be paid a loading on the appropriate ordinary hourly rate of pay of:
- 15% for work performed on Mondays to Fridays (inclusive)
 - 25% for work performed on Saturdays

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- 50% for work performed on Sundays
- 150% for work performed on public holidays.
- All employees engaged on or prior to 25 August 1989 shall continue to be paid for Saturday afternoon work in ordinary time at the employee's penalty rate applicable at that time

3.3.6 Casual employees shall also receive a 1/12th loading in lieu of annual leave.

3.3.7 The loadings specified in paragraph 3.3.4 and 3.3.5 are in recognition of the casual nature of the employment and compensate the employee for all leave, other than annual leave and long service leave, and all incidents of employment, except overtime.

Overtime

3.3.8 Casual employees shall be paid overtime as provided by clause 6 – Overtime

3.3.9 Overtime payments for casual employees are based on the ordinary hourly rate plus the 15% loading set out in paragraph 3.3.5 of this clause.

3.3.10 The loading in lieu of annual leave as set out in paragraph 3.3.6 of this clause is not included in the hourly rate for the calculation of overtime payments for casual employees.

Leave

3.3.11 Other than as described hereunder casual employees are not entitled to any other paid or unpaid leave.

3.3.12 As set out in paragraph 3.3.6 casual employees will be paid 1/12th in lieu of annual leave.

3.3.13 Casual employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act 1955*.

3.3.14 Casual employees are entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, section 54, Entitlement to Unpaid Parental Leave of the *Industrial Relations Act 1996*. The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

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3.3.15 A principal must not fail to re-engage a regular casual employee (as defined in 53(2) of the Act) because:

3.3.15(a) the employee or employee's spouse is pregnant; or

3.3.15(b) the employee is or has been immediately absent on parental leave.

The rights of the Department in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

Personal Carers entitlement for casual employees

3.3.16 Casual employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in paragraph 11.15.4 of clause 11.15, Sick Leave to Care for a Family Member of this determination who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out in paragraph 3.3.19, and the notice requirements set out in paragraph 3.3.20 of this clause.

3.3.17 The Secretary and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

3.3.18 A casual employee will not fail to be re-engaged because the employee accessed the entitlements provided for in this clause. The rights of the Department to engage or not to engage a casual employee are otherwise not affected.

3.3.19 The casual employee shall, if required,

3.3.19(a) establish either by production of 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, or

3.3.19(b) establish by production of documentation acceptable to the Department or a statutory declaration, the nature of

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the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a casual employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- 3.3.20 The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the principal of their inability to attend for duty. If it is not reasonably practicable to inform the principal during the ordinary hours of the first day or shift of such absence, the employee will inform the principal within 24 hours of the absence.

Bereavement entitlements for casual employees

- 3.3.21 Casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Department).
- 3.3.22 The Secretary and the casual employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- 3.3.23 A principal will not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of the Department to engage or not engage a casual employee are otherwise not affected.
- 3.3.24 The casual employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Department of their inability to attend for duty. If it is not reasonably practicable to inform the Department during the ordinary hours of the first day or shift of such absence, the employee will inform the Department within 24 hours of the absence.
- 3.3.25 The following clauses of the determination do not apply to casual employees:

5 Weekend loadings

9 Holidays

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- 10 Picnic Day
- 11 Leave
- 18 Travelling Time, Expense Allowances

4. HOURS

- 4.1 Weekly Hours - The ordinary hours of work of employees shall not exceed 38 per week and shall be worked on five days of the week, Monday to Sunday, inclusive.
- 4.2 Ordinary hours may be worked on six days in one week if in the following week ordinary hours are worked on not more than four days. Save for meal times prescribed, all time between the actual commencing time and ceasing time on any one day shall count and shall be paid for as time worked.
- 4.3 An employee's hours may be worked so that the maximum number of hours that shall constitute an ordinary week's work without the payment of overtime shall not exceed an average of 38 per week and may be worked in any one of the following forms:
 - 4.3.1 38 hours in one week;
 - 4.3.2 76 hours in two consecutive weeks;
 - 4.3.3 114 hours in three consecutive weeks;
 - 4.3.4 152 hours in four consecutive weeks.
- 4.4 Commencing times and ceasing times - Ordinary hours shall be worked between the hours of 7:00am and 11:30pm Monday to Sunday.
- 4.5 Within the commencing and ceasing times defined at sub-clause 4.4, employees shall be given a regular starting and ceasing time for each day which shall not be changed except upon not less than seven days' notice, unless by agreement with the employee or in the event of an emergency.
- 4.6 There shall be not less than a ten-hour break between finishing work (including overtime) on one day or shift and the commencement of work on the next day or shift.

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- 4.7 When establishing a roster or changing a roster, the Principal will have regard for the family responsibilities of the employee.

In having regard for the family responsibilities, it is accepted that the existence of such responsibilities does not in itself prevent a Principal changing an employee's roster where necessary.

- 4.8 Temporary employees shall be provided with a regular roster which shall not be subject to frequent variations unless by mutual agreement.

5. WEEKEND LOADINGS

- 5.1 All ordinary hours worked by temporary employees on Saturday shall be paid for at the rate of time and one-quarter.
- 5.2 All employees engaged on or prior to 25 August 1989 shall continue to be paid for Saturday afternoon work in ordinary time at the employee's penalty rate applicable at that time.
- 5.3 All ordinary hours worked by employees on a Sunday shall be paid at the rate of time and one-half.

6. OVERTIME

- 6.1 The rate of overtime shall be time and one-half for the first two hours on any one day and at the rate of double time thereafter, except on a Sunday which shall be paid for at the rate of double time.
- 6.2 An employee shall be paid overtime for all work as follows:

6.2.1 In excess of:

- (a) 38 hours per week; or
an average of 38 hours per week in accordance with clause 4, Hours;
- (b) five days per week (or six days or four days pursuant to clause 4.2);
- (c) nine hours on any one day, provided that on one day per week up to 11 hours may be worked without the payment of overtime; by mutual agreement, additional days of up to 11 ordinary hours may be worked without the payment

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of overtime;

- 6.2.2 before an employee's regular commencing time on any one day;
 - 6.2.3 after the prescribed ceasing time on any one day;
 - 6.2.4 outside the ordinary hours of work.
- 6.3 Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time, with a minimum payment of four hours at such rate.
- 6.4 Any portion of an hour less than 30 minutes shall be reckoned as 30 minutes and any portion of an hour over 30 minutes shall be reckoned as one hour, except where an employee is required to work after closing time to attend to customers then in the shop, or in connection with closing the shop, including the checking of cash received, when the time actually worked shall count.
- 6.5 By mutual agreement the rate for overtime may be time off in lieu of overtime, provided that:
- 6.5.1 Time off shall be calculated at the penalty equivalent.
 - 6.5.2 The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.
 - 6.5.3 Time off must be taken within one calendar month of the working of the overtime, or it shall be paid out.
- 6.6 Subject to sub-clause 6.6.1 a principal may require an employee to work reasonable overtime at overtime rates, or as otherwise provided for by this determination.
- 6.6.1 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
 - 6.6.2 For the purposes of sub-clause 6.6.1 what is unreasonable or otherwise will be determined having regard to:
 - (a) any risk to employee health and safety;

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- (b) the employee's personal circumstances including any family and carer responsibilities;
- (c) the needs of the school;
- (d) the notice (if any) given by the Principal of the overtime and by the employee of his or her intention to refuse it; and
- (e) any other relevant matter.

7. MEAL TIMES AND REST PAUSES

- 7.1 When and where it can be conveniently arranged by the principal, an employee who works more than four ordinary hours on any day shall be allowed a rest pause of ten minutes.
- 7.2 A rest pause shall be counted and paid for as time worked. No rest pause shall be given or taken within one hour of the employee's commencing or ceasing time or within one hour before or after any meal break.
- 7.3 An employee who works more than five hours on any day must be allowed both a rest pause of ten minutes and a meal break of not less than 30 minutes nor more than one hour, the duration of which will be decided by the Principal having regard to the needs of the school.
- 7.4 A meal break shall be given and taken so that no employee shall work more than five consecutive hours without a meal break.
- 7.5 Meal breaks are not counted and not paid for as time worked.
- 7.6 An employee who works nine hours or more on any day shall be allowed two rest pauses (each of ten minutes duration) if only one meal break is taken; or one rest pause of ten minutes if two meal breaks are taken.

Where two rest pauses and one meal break are taken, then one rest pause shall be taken before the meal break and one rest pause shall be taken after the meal break.

Where two meal breaks and one rest pause are taken during any shift, then the rest pause shall be taken during the longest unbroken part of such shift.

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8. MEAL ALLOWANCES

- 8.1 An employee who works overtime after 6.30 pm shall be paid, on such day, the amount set out in Item 1 Table 2 - Other Rates and Allowances, of Schedule 1, Monetary Rates, as a meal allowance or shall be provided with a suitable meal.
- 8.2 An employee commencing before 7.00 am shall be allowed not less than 30 minutes nor more than one hour off for breakfast before 9.00 am. If, through distance of residence, the employee cannot return home for breakfast, the employee shall be paid the sum set out in Item 4 of Table 2 of Schedule 1, Monetary Rates for breakfast each morning the employee starts work before 7.00 am.
- 8.3 Subject to the provisions contained in this clause, the actual period of the meal break shall be determined by the Principal.

9. HOLIDAYS

- 9.1 The days observed as New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day and all days proclaimed as public holidays for the State shall be holidays; provided that any day proclaimed as a holiday for the State for a special purpose but observed throughout the State on different days also shall be a holiday.
- 9.2 Work performed by a temporary employee on such days is paid at double time and a half with a minimum payment of three hours. If a holiday is taken by a temporary employee, payment for the holiday shall be made at ordinary time provided that the day is a normal working day.
- 9.3 Any temporary employee whose roster is changed with the intent of avoiding or reducing payment due or the benefit applicable under this clause and who would, but for the change of roster, have been entitled otherwise to a payment or benefit for a public holiday or holidays shall be paid for such holiday or holidays as if his/her roster had not been changed.
- 9.4 Where a temporary employee working an average of five days per week is rostered so that he/she does not work his/her ordinary hours on the same days each week and the employee's rostered day off falls on a day prescribed as a holiday in sub-clause 9.1, the employee shall be paid by mutual agreement between the Principal and the employee in one of the following methods:

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- 9.4.1 payment of an additional day's wages;
- 9.4.2 addition of one day to the employee's annual holidays;
- 9.4.3 another day may be allowed off with pay to the employee within 28 days after the holiday falls, or during the week prior to the holiday.

For the purposes of this paragraph, "day" means the average number of hours in the employee's normal roster cycle worked by the employee prior to the day on which the public holiday falls.

- 9.5 A temporary employee absent without leave on their last working day before or their first working day after any award holiday shall be liable to forfeit wages for the day of absence as well as for the holiday, except where a principal is satisfied that the employee's absence was caused through illness, in which case wages shall not be forfeited for the holiday; provided that an employee absent on one day only either before or after a group of holidays shall forfeit wages only for one holiday as well as for the period of absence.

10. PICNIC DAY

- 10.1 Temporary employees shall be entitled to a holiday without loss of pay on the first Tuesday of November in any year, provided this day forms part of their roster.
- 10.2 Where a temporary employee volunteers to work on the picnic day, such employee shall then be given another day off without loss of pay. Such alternative day shall be given and taken not later than 28 days after the nominated day on a day mutually agreed between the Principal and the employee.
- 10.3 In no circumstances shall an employee forfeit entitlement to the picnic day and should such extenuating circumstances arise where the day is not taken as described above, it must be given and taken on a day without loss of pay added to the employee's next period of annual leave.
- 10.4 Where a temporary employee's employment terminates prior to the taking of such alternative day, the employee shall receive an additional day's pay on termination.
- 10.5 Employees on annual leave or extended leave on the picnic day shall

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have an additional day added to their next period of annual leave.

11. LEAVE

11.1 General Provisions

- 11.1.1 Unless otherwise specified, part-time staff members will receive the paid leave provisions of this determination on a pro rata basis, calculated according to the number of hours worked per week.
- 11.1.2 Unless otherwise specified in this determination a temporary employee is eligible to take a period of approved leave during the current period of employment and may continue such leave during a subsequent period or periods of employment in the Public Service, if such period or periods of employment commence immediately on termination of a previous period or periods of employment.
- 11.1.3 Where paid and unpaid leave is available to be granted in terms of this award, paid leave shall be taken before unpaid leave.

11.2 Absence from Work

- 11.2.1 A staff member must not be absent from work unless reasonable cause is shown.
- 11.2.2 If a staff member is to be absent from duty because of illness or other emergency, the staff member shall notify or arrange for another person to notify the Principal or supervisor as soon as possible of the staff member's absence and the reason for the absence.
- 11.2.3 If a satisfactory explanation for the absence is not provided, the staff member will be regarded as absent from duty without authorised leave and the Secretary shall deduct from the pay of the staff member the amount equivalent to the period of the absence.
- 11.2.4 The minimum period of leave available to be granted shall be a quarter day, unless local arrangements negotiated in the workplace allow for a lesser period to be taken.
- 11.2.5 Nothing in this clause affects any proceedings for a breach of discipline against a staff member who is absent from duty without authorised leave.

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11.3 Applying for Leave

- 11.3.1 An application by a staff member for leave under this determination shall be made to and dealt with by the Secretary.
- 11.3.2 The Secretary shall deal with the application for leave according to the wishes of the staff member, if the operational requirements of the Department permit this to be done.

11.4 Extended Leave

- 11.4.1 Extended leave shall accrue and shall be granted to staff members in accordance with the provisions of Schedule 1 of the *Government Sector Employment Regulations, 2014*.

11.5 Family and Community Service Leave

- 11.5.1 The Secretary shall grant to a staff member some, or all of their accrued family and community service leave on full pay, for reasons relating to unplanned and emergency family responsibilities or other emergencies as described in subclause 11.5.2 of this clause. The Secretary may also grant leave for the purposes in subclause 11.5.3 of this clause. Non-emergency appointments or duties shall be scheduled or performed outside of normal working hours or through approved use of flexible working arrangements or other appropriate leave.
- 11.5.2 Such unplanned and emergency situations may include, but not be limited to, the following:-
 - 11.5.2(a) Compassionate grounds - such as the death or illness of a close member of the family or a member of the staff member's household;
 - 11.5.2(b) Emergency accommodation matters up to one day, such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
 - 11.5.2(c) Emergency or weather conditions; such as when flood, fire, snow or disruption to utility services etc, threatens a staff member's property and/or prevents a staff member from reporting for duty;

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- 11.5.2(d) Attending to unplanned or unforeseen family responsibilities, such as attending child's school for an emergency reason or emergency cancellations by child care providers;
- 11.5.2(e) Attendance at court by a staff member to answer a charge for a criminal offence, only if the Secretary considers the granting of family and community service leave to be appropriate in a particular case.

11.5.3 Family and community service leave may also be granted for:

- 11.5.3 (a) An absence during normal working hours to attend meetings, conferences or to perform other duties, for staff members holding office in Local Government, and whose duties necessitate absence during normal working hours for these purposes, provided that the staff member does not hold a position of Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council; and
- 11.5.3(b) Attendance as a competitor in major amateur sport (other than Olympic or Commonwealth Games) for staff members who are selected to represent Australia or the State.

11.5.4 The definition of "family" or "relative" in this clause is the same as that provided in paragraph 11.15.4, Sick Leave to Care for a Family Member of this determination.

11.5.5 Family and community service leave shall accrue as follows:

- 11.5.5(a) two and a half days in the staff member's first year of service;
- 11.5.5(b) two and a half days in the staff member's second year of service; and
- 11.5.5(c) one day per year thereafter.

11.5.6 If available family and community service leave is exhausted as a result of natural disasters, the Secretary shall consider applications for additional family and community service leave, if some other emergency arises.

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- 11.5.7 If available family and community service leave is exhausted, on the death of a family member or relative, additional paid family and community service leave of up to 2 days may be granted on a discrete, per occasion basis to a staff member.
- 11.5.8 In cases of illness of a family member for whose care and support the staff member is responsible, paid sick leave in accordance with the provisions of Sick Leave to Care for a Sick Family Member of this determination shall be granted when paid family and community service leave has been exhausted or is unavailable.
- 11.5.9 The Secretary may also grant staff members other forms of leave such as accrued recreation leave, time off in lieu, and so on for family and community service leave purposes.

11.6 Leave Without Pay

- 11.6.1 The Secretary may grant leave without pay to a staff member if good and sufficient reason is shown.
- 11.6.2 Leave without pay may be granted on a full-time or a part-time basis.
- 11.6.3 Where a staff member is granted leave without pay for a period not exceeding 10 consecutive working days, the staff member shall be paid for any proclaimed public holidays falling during such leave without pay.
- 11.6.4 Where a staff member is granted leave without pay which, when aggregated, does not exceed 5 working days in a period of twelve (12) months, such leave shall count as service for incremental progression and accrual of recreation leave.
- 11.6.5 A staff member who has been granted leave without pay shall not engage in employment of any kind during the period of leave without pay, unless prior approval has been obtained from the Secretary.
- 11.6.6 A staff member shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the staff member elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.
- 11.6.7 No paid leave shall be granted during a period of leave without pay.

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11.7 Military Leave

- 11.7.1 During the period of 12 months commencing on 1 July each year, the Secretary may grant to a staff member who is a volunteer part-time member of the Defence Forces, military leave on full pay to undertake compulsory annual training and to attend schools, classes or courses of instruction or compulsory parades conducted by the staff member's unit.
- 11.7.2 In accordance with the *Defence Reserve Service (Protection) Act 2001* (Cth), it is unlawful to prevent a staff member from rendering or volunteering to render, ordinary Defence Reserve Service.
- 11.7.3. Up to 24 working days military leave per financial year may be granted by the Secretary to members of the Naval and Military Reserves and up to 28 working days per financial year to members of the Air Force Reserve for the activities specified in subclause 11.7.1 of this clause.
- 11.7.4 The Secretary may grant a staff member special leave of up to 1 day to attend medical examinations and tests required for acceptance as volunteer part time members of the Australian Defence Forces.
- 11.7.5 A staff member who is requested by the Australian Defence Forces to provide additional military services requiring leave in excess of the entitlement specified in subclause 11.7.3 may be granted Military Leave Top up Pay by the Secretary.
- 11.7.6 Military Leave Top up Pay is calculated as the difference between a staff member's ordinary pay as if they had been at work, and the Reservist's pay which they receive from the Commonwealth Department of Defence.
- 11.7.7 During a period of Military Leave Top up Pay, a staff member will continue to accrue sick leave, recreation and extended leave entitlements, and the Department will continue to make superannuation contributions at the normal rate.
- 11.7.8 At the expiration of military leave in accordance with subclauses 11.7.3 of this clause, the staff member shall furnish to the Secretary a certificate of attendance and details of the staff members reservist pay signed by the commanding officer or other responsible officer.

11.8. Observance of Essential Religious or Cultural Obligations

- 11.8.1 A staff member of:

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- 11.8.1(a) any religious faith who seeks leave for the purpose of observing essential religious obligations of that faith; or
- 11.8.1(b) any ethnic or cultural background who seeks leave for the purpose of observing any essential cultural obligations, may be granted recreation/extended leave to credit or leave without pay to do so.
- 11.8.2 Provided adequate notice as to the need for leave is given by the staff member to the Department and it is operationally convenient to release the staff member from duty, the Secretary must grant the leave applied for by the staff member in terms of this clause.
- 11.8.3 A staff member of any religious faith who seeks time off during daily working hours to attend to essential religious obligations of that faith, shall be granted such time off by the Secretary, subject to:
 - 11.8.3(a) adequate notice being given by the staff member;
 - 11.8.3(b) prior approval being obtained by the staff member; and
 - 11.8.3(c) the time off being made up in the manner approved by the Secretary.
- 11.8.4 Notwithstanding the provisions of subclauses 11.8.3(a)(b) and (c) of this clause, arrangements may be negotiated between the Secretary and the Association in terms of clause 19, Local Arrangements of this determination to provide greater flexibility for staff members for the observance of essential religious or cultural obligations.

11.9 Parental Leave

- 11.9.1 Parental leave includes maternity, adoption and "other parent" leave.
- 11.9.2 Maternity leave shall apply to a staff member who is pregnant and, subject to this clause the staff member shall be entitled to be granted maternity leave as follows:
 - 11.9.2(a) for a period up to 9 weeks prior to the expected date of birth; and
 - 11.9.2(b) for a further period of up to 12 months after the actual date of birth.

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- 11.9.2(c) A staff member who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.
- 11.9.3 Adoption leave shall apply to a staff member adopting a child and who will be the primary care giver, the staff member shall be granted adoption leave as follows:
- 11.9.3(a) for a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or
- 11.9.3(b) for such period, not exceeding 12 months on a full-time basis, as the Secretary may determine, if the child has commenced school at the date of the taking of custody.
- 11.9.3(c) *Special Adoption Leave* - A staff member shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave or family and community service leave.
- 11.9.4 Where maternity or adoption leave does not apply, "other parent" leave is available to male and female staff who apply for leave to look after his/her child or children. Other parent leave applies as follows:
- 11.9.4(a) Short other parent leave - an unbroken period of up to 8 weeks at the time of the birth of the child or other termination of the spouse's or partner's pregnancy or, in the case of adoption, from the date of taking custody of the child or children;
- 11.9.4(b) Extended other parent leave - for a period not exceeding 12 months, less any short other parental leave already taken by the staff member as provided for in paragraph 11.9.4 (a) of this subclause. Extended other parental leave may commence at any time up to 2 years from the date of birth of the child or the taking of custody of the child.
- 11.9.5 A staff member taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of up to 14 weeks, a staff member entitled to short other parent leave is entitled to payment at the ordinary

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rate of pay for a period of up to 1 week, provided the staff member:

11.9.5(a) applied for parental leave within the time and in the manner determined set out in subclause 11.9.11 to 11.9.18 of this clause; and

11.9.5(b) prior to the commencement of parental leave, completed not less than 40 weeks' continuous service.

11.9.5(c) Payment for the maternity, adoption or short other parent leave may be made as follows:

(i) in advance as a lump sum; or

(ii) fortnightly as normal; or

(iii) fortnightly at half pay; or

(iv) a combination of full-pay and half pay.

11.9.6 Payment for parental leave is at the rate applicable when the leave is taken. A staff member holding a full time position who is on part time leave without pay when they start parental leave is paid:

11.9.6(a) at the full time rate if they began part time leave 40 weeks or less before starting parental leave;

11.9.6(b) at the part time rate if they began part time leave more than 40 weeks before starting parental leave and have not changed their part time work arrangements for the 40 weeks;

11.9.6(c) at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.

11.9.7 A staff member who commences a subsequent period of maternity or adoption leave for another child within 24 months of commencing an initial period of maternity or adoption leave will be paid:

11.9.7(a) at the rate (full time or part time) they were paid before commencing the initial leave if they have not returned to

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work; or

11.9.7(b) at a rate based on the hours worked before the initial leave was taken, where the staff member has returned to work and reduced their hours during the 24 month period; or

11.9.7(c) at a rate based on the hours worked prior to the subsequent period of leave where the staff member has not reduced their hours.

11.9.8 Except as provided in subclauses 11.9.5, 11.9.6 and 11.9.7 of this clause, parental leave shall be granted without pay.

Right to request

11.9.9 A staff member who has been granted parental leave in accordance with subclause 11.9.1, 11.9.3 or 11.9.4 of this clause may make a request to the Secretary to:

11.9.9(a) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;

11.9.9(b) return from a period of full time parental leave on a part time basis until the child reaches school age (Note: returning to work from parental leave on a part time basis includes the option of returning to work on part time leave without pay);

to assist the staff member in reconciling work and parental responsibilities.

11.9.10 The Secretary shall consider the request having regard to the staff member's circumstances and, provided the request is genuinely based on the staff member's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Secretary's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

Notification Requirements

11.9.11 When the Department is made aware that a staff member or their spouse is pregnant or is adopting a child, the Department must inform the staff

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member of their entitlements and their obligations under the determination.

11.9.12 A staff member who wishes to take parental leave must notify the Secretary in writing at least 8 weeks (or as soon as practicable) before the expected commencement of parental leave:

11.9.12(a) that she/he intends to take parental leave, and

11.9.12(b) the expected date of birth or the expected date of placement, and

11.9.12(c) if she/he is likely to make a request under subclause 11.9.9 of this clause.

11.9.13 At least 4 weeks before a staff member's expected date of commencing parental leave they must advise:

11.9.13(a) the date on which the parental leave is intended to start, and

11.9.13(b) the period of leave to be taken.

Staff member's request and the Secretary's decision in writing

11.9.14 The staff member's request under paragraph 11.9.9 and the Secretary's decision made under paragraph 11.9.10 must be recorded in writing.

11.9.15 A staff member intending to request to return from parental leave on a part time basis or seek an additional period of leave of up to 12 months must notify the Secretary in writing as soon as practicable and preferably before beginning parental leave. If the notification is not given before commencing such leave, it may be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Secretary agrees.

11.9.16 A staff member on maternity leave is to notify the Department of the date on which she gave birth as soon as she can conveniently do so.

11.9.17 A staff member must notify the Department as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.

11.9.18 A staff member on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the Department and

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any number of times with the consent of the Department. In each case she/he must give the Department at least 14 days' notice of the change unless the Secretary decides otherwise.

11.9.19 A staff member has the right to her/his former position if she/he has taken approved leave or part time work in accordance with subclause 11.9.9 of this clause, and she/he resumes duty immediately after the approved leave or work on a part time basis.

11.9.20 If the position occupied by the staff member immediately prior to the taking of parental leave has ceased to exist, but there are other positions available that the staff member is qualified for and is capable of performing, the staff member shall be appointed to a position of the same grade and classification as the staff member's former position.

11.9.21 A staff member does not have a right to her/his former position during a period of return to work on a part time basis. If the Secretary approves a return to work on a part time basis then the position occupied is to be at the same classification and grade as the former position.

11.9.22 A staff member who has returned to full time duty without exhausting their entitlement to 12 months unpaid parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks' notice (or less if acceptable to the Department) must be given.

11.9.23 A staff member who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. A staff member may apply for accrued recreation leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave, ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.

11.9.24 A staff member may elect to take available recreation leave or extended leave within the period of parental leave provided this does not extend the total period of such leave.

11.9.25 A staff member may elect to take available recreation leave at half pay in conjunction with parental leave provided that:

11.9.25(a) accrued recreation leave at the date leave commences is exhausted within the period of parental leave;

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- 11.9.25(b) the total period of parental leave is not extended by the taking of recreation leave at half pay;
- 11.9.25(c) when calculating other leave accruing during the period of recreation leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further recreation, extended and other leave at the full time rate.
- 11.9.26 If, for any reason, a pregnant staff member is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Secretary should, in consultation with the staff member, take all reasonable measures to arrange for safer alternative duties. This may include, but is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, teleworking and job redesign.
- 11.9.27 If such adjustments cannot reasonably be made, the Secretary must grant the staff member maternity leave, or any available sick leave, for as long as it is necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born whichever is the earlier.

Communication during parental leave

- 11.9.28 Where a staff member is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Department shall take reasonable steps to:
- 11.9.28(a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave; and
- 11.9.28(b) provide an opportunity for the staff member to discuss any significant effect the change will have on the status or responsibility level of the position the staff member held before commencing parental leave.
- 11.9.29 The staff member shall take reasonable steps to inform the Secretary about any significant matter that will affect the staff member's decision regarding the duration of parental leave to be taken, whether the staff member intends to return to work and whether the staff member intends to request to return to work on a part time basis.

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11.9.30 The staff member shall also notify the Secretary of changes of address or other contact details which might affect the Department's capacity to comply with paragraph 11.9.28 of this subclause.

11.10 Purchased Leave

11.10.1 A staff member may apply to enter into an agreement with the Secretary to purchase either 10 days (2 weeks) or 20 days (4 weeks) additional leave in a 12 month period.

11.10.1(a) Each application will be considered subject to operational requirements and personal needs and will take into account departmental business needs and work demands.

11.10.1(b) The leave must be taken in the 12 month period specified in the Purchased Leave Agreement and will not attract any leave loading.

11.10.1(c) The leave will count as service for all purposes.

11.10.2 The purchased leave will be funded through the reduction in the staff member's ordinary rate of pay.

11.10.2(a) Purchased leave rate of pay means the rate of pay a staff member receives when their ordinary salary rate has been reduced to cover the cost of purchased leave.

11.10.2(b) To calculate the purchased leave rate of pay, the staff member's ordinary salary rate will be reduced by the number of weeks of purchased leave and then annualised at a pro rata rate over the 12 month period.

11.10.3 Purchased leave is subject to the following provisions:

11.10.3(a) The purchased leave cannot be accrued and will be refunded where it has not been taken in the 12 month period.

11.10.3(b) Other leave taken during the 12 month purchased leave agreement period i.e. sick leave, recreation leave, extended leave or leave in lieu will be paid at the purchased leave rate of pay.

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- 11.10.3(c) Sick leave cannot be taken during a period of purchased leave.
- 11.10.3(d) The purchased leave rate of pay will be the salary for all purposes including superannuation and shift loadings, if appropriate.
- 11.10.3(e) Overtime and salary related allowances not paid during periods of recreation leave will be calculated using the staff member's hourly rate based on the ordinary rate of pay.
- 11.10.3(f) Higher Duties Allowance will not be paid when a period of purchased leave is taken.

11.10.4 Specific conditions governing purchased leave may be amended from time to time by the Secretary in consultation with the Association. The Department may make adjustments relating to its salary administration arrangements.

11.11 Recreation Leave

Accrual

- 11.11.1 Except where stated otherwise in this determination, paid recreation leave for full time staff members and recreation leave for staff members working part time, accrues at the rate of 20 working days per year. Staff members working part time shall accrue paid recreation leave on a pro rata basis, which will be determined on the average weekly hours worked per leave year.
- 11.11.2 Additional recreation leave, at the rate of 5 days per year, accrues to a staff member, employed in terms of the *Government Sector Employment Act, 2013*, who is stationed indefinitely in a remote area of the State, being the Western and Central Division of the State described as such in the Second Schedule to the *Crown Lands Consolidation Act, 1913* before its repeal.
- 11.11.3 Recreation leave accrues from day to day.

Limits on Accumulation and Direction to Take Leave

- 11.11.4 At least two (2) consecutive weeks of recreation leave shall be taken by a staff member every 12 months, except by agreement with the

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Secretary in special circumstances.

11.11.5 Where the operational requirements permit, the application for leave shall be dealt with by the Secretary according to the wishes of the staff member.

11.11.6 The Secretary shall notify the staff member in writing when accrued recreation leave reaches 6 weeks or its hourly equivalent and at the same time may direct a staff member to take at least 2 weeks recreation leave within 3 months of the notification at a time convenient to the Department.

11.11.7 The Secretary shall notify the staff member in writing when accrued recreation leave reaches 8 weeks or its hourly equivalent and direct the staff member to take at least 2 weeks recreation leave within 6 weeks of the notification. Such leave is to be taken at a time convenient to the Department.

11.11.8 A staff member must take their recreation leave to reduce all balances below 8 weeks or its hourly equivalent, and the Department must cooperate in this process.

Conservation of Leave

11.11.9 If the Secretary is satisfied that a staff member is prevented by operational or personal reasons from taking sufficient recreation leave to reduce the accrued leave below an acceptable level of between 4 and 6 weeks or its hourly equivalent, the Secretary shall:-

11.11.9(a) specify in writing the period of time during which the excess shall be conserved; and

11.11.9(b) on the expiration of the period during which conservation of leave applies, grant sufficient leave to the staff member at a mutually convenient time to enable the accrued leave to be reduced to an acceptable level below the 8 week limit.

11.11.9(c) The Secretary will inform a staff member in writing on a regular basis of the staff member's recreation leave accrual.

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Miscellaneous

- 11.11.10 Unless a local arrangement has been negotiated between the Secretary and the Association, recreation leave is not to be granted for a period less than a quarter-day or in other than multiples of a quarter day.
- 11.11.11 Recreation leave for which a staff member is eligible on cessation of employment is to be calculated to a quarter day (fractions less than a quarter being rounded up).
- 11.11.12 Recreation leave does not accrue to a staff member in respect of any period of absence from duty without leave or without pay, except as specified in paragraph 11.12.13 of this subclause.
- 11.11.13 Recreation leave accrues during any period of leave without pay granted on account of incapacity for which compensation has been authorised to be paid under the *Workers Compensation Act 1987*; or any period of sick leave without pay or any other approved leave without pay, not exceeding 5 full time working days, or their part time equivalent, in any period of 12 months.
- 11.11.14 The proportionate deduction to be made in respect of the accrual of recreation leave on account of any period of absence referred to in paragraph 11.11.13 of this subclause shall be calculated to an exact quarter-day (fractions less than a quarter being rounded down).
- 11.11.15 Recreation leave accrues at half its normal accrual rate during periods of extended leave on half pay or recreation leave taken on half pay.
- 11.11.16 Recreation leave may be taken on half pay in conjunction with and subject to the provisions applying to adoption, maternity or parental leave - see clause 11.9 Parental Leave of this determination
- 11.11.17 On cessation of employment, a staff member is entitled to be paid, the money value of accrued recreation leave which remains untaken.
- 11.11.18 A staff member to whom paragraph 11.11.17 of this subclause applies may elect to take all or part of accrued recreation leave which remains untaken at cessation of active duty as leave or as a lump sum payment or as a combination of leave and lump sum payment.

Death

- 11.11.19 Where a staff member dies, the monetary value of recreation leave

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accrued and remaining untaken as at the date of death, shall be paid to the staff member's nominated beneficiary.

11.11.20 Where no beneficiary has been nominated, the monetary value of recreation leave is to be paid as follows:-

- 11.11.20(a) to the widow or widower of the staff member; or
- 11.11.20(b) if there is no widow or widower, to the children of the staff member or, if there is a guardian of any children entitled under this subclause, to that guardian for the children's maintenance, education and advancement; or
- 11.11.20(c) if there is no such widow, widower or children, to the person who, in the opinion of the Secretary was, at the time of the staff member's death, a dependent relative of the staff member; or
- 11.11.20(d) if there is no person entitled under paragraphs 11.11.20(a)(b) or (c) of this subclause to receive the money value of any leave not taken or not completed by a staff member or which would have accrued to the staff member, the payment shall be made to the personal representative of the staff member.

11.11.21 Recreation leave does not accrue during leave without pay other than:

- 11.11.21(a) military leave taken without pay when paid military leave entitlements are exhausted;
- 11.11.21(b) absences due to natural emergencies or major transport disruptions, when all other paid leave is exhausted;
- 11.11.21(c) any continuous period of sick leave taken without pay when paid sick leave is exhausted;
- 11.11.21(d) incapacity for which compensation has been authorised under the *Workplace Injury Management and Workers Compensation Act 1998*; or
- 11.11.21(e) periods which when aggregated, do not exceed 5 working days in any period of 12 months.

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11.11.22 A staff member entitled to additional recreation leave under paragraph 11.11.2 of this clause, can elect at any time to cash out the additional recreation leave.

11.12 Annual Leave Loading

General

11.12.1 A staff member is entitled to be paid an annual leave loading as set out in this subclause. Subject to the provisions set out in subclauses 11.12.2 to 11.12.4 the annual leave loading shall be 17½% on the monetary value of up to 4 weeks recreation leave accrued in a leave year.

11.12.2 Loading on additional leave accrued - Where additional leave is accrued by a staff member:-

11.12.2.(a) as compensation for work performed regularly on Sundays and/or Public Holidays, the annual leave loading shall be calculated on the actual leave accrued or on five weeks, whichever is the lower.

11.12.2.(b) If stationed in an area of the State of New South Wales which attracts a higher rate of annual leave accrual, the annual leave loading shall continue to be paid on a maximum of 4 weeks leave.

Leave year

11.12.3 For the calculation of the annual leave loading, the leave year shall commence on 1 December each year and shall end on 30 November of the following year.

Payment of annual leave loading

11.12.4 Payment of the annual leave loading shall be made on the recreation leave accrued during the previous leave year and shall be subject to the following conditions:

11.12.4(a) Annual leave loading shall be paid on the first occasion in a leave year, other than the first leave year of employment, when a staff member takes at least two (2) consecutive weeks recreation leave. Where a staff member does not have at least 2 weeks recreation leave available, the staff member may use a combination of

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recreation leave and any of the following if appropriate: public holidays, extended leave, leave without pay, time off in lieu, rostered day off. The staff member shall be paid the annual leave loading for such period, provided the absence is at least 2 weeks.

- 11.12.4(b) If at least two weeks leave, as set out in paragraph 11.12.4(a), is not taken in a leave year, then the payment of the annual leave loading entitlement for the previous leave year shall be made to the staff member as at 30 November of the current year.
- 11.12.4(c) While annual leave loading shall not be paid in the first leave year of employment, it shall be paid on the first occasion in the second leave year of employment when at least two weeks leave, as specified in paragraph 11.12.4(a) is taken.
- 11.12.4(d) A staff member who has not been paid the annual leave loading for the previous leave year, shall be paid such annual leave loading on resignation, retirement or termination by the Department for any reason other than the staff member's serious and intentional misconduct.
- 11.12.4(e) Except in cases of voluntary redundancy, proportionate leave loading is not payable on cessation of employment.

11.13 Sick Leave

11.13.1 Illness in this clause and in clauses 11.14 and 11.15 of this determination means physical or psychological illness or injury, medical treatment and the period of recovery or rehabilitation from an illness or injury.

11.13.2 Payment for sick leave is subject to the staff member:

- 11.13.2(a) 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
- 11.13.2(b) providing evidence of illness as soon as practicable if required by clause 11.14, Sick Leave - Requirements for Evidence of Illness of this determination.

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11.13.3 If the Secretary is satisfied that a staff member is unable to perform duty because of the staff member's illness or the illness of his/her family member, the Secretary:

11.13.3(a) shall grant to the staff member sick leave on full pay; and

11.13.3(b) may grant to the staff member, sick leave without pay if the absence of the staff member exceeds the entitlement of the staff member under this determination to sick leave on full pay.

11.13.4 The Secretary may direct a staff member to take sick leave if they are satisfied that, due to the staff member's illness, the staff member:

11.13.4(a) is unable to carry out their duties without distress; or

11.13.4(b) risks further impairment of their health by reporting for duty; or

11.13.4(c) is a risk to the health, wellbeing or safety of other staff members, Departmental clients or members of the public.

11.13.5 The Secretary may direct a staff member to participate in a return to work program if the staff member has been absent on a long period of sick leave.

Entitlements

11.13.6 From the date of making of this determination, a staff member accrues sick leave as follows.

11.13.6(a) At the commencement of employment with the Public Service, a full-time staff member is granted an accrual of 5 days sick leave.

11.13.6(b) After the first four months of employment, the staff member shall accrue sick leave at the rate of 10 working days per year for the balance of the first year of service.

11.13.6(c) After the first year of service, the staff member shall accrue sick leave day to day at the rate of 15 working days per year of service.

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- 11.13.6(d) All continuous service as a staff member in the NSW public service shall be taken into account for the purpose of calculating sick leave due. Where the service in the NSW public service is not continuous, previous periods of public service shall be taken into account for the purpose of calculating sick leave due if the previous sick leave records are available.
- 11.13.6(e) Notwithstanding the provisions of paragraph 11.14.6 (d), sick leave accrued and not taken in the service of a public sector employer may be accessed in terms of the Public Sector Staff Mobility Policy.
- 11.13.6(f) Sick leave without pay shall count as service for the accrual of recreation leave and paid sick leave. In all other respects sick leave without pay shall be treated in the same manner as leave without pay.
- 11.13.6(g) When determining the amount of sick leave accrued, sick leave granted on less than full pay, shall be converted to its full pay equivalent.
- 11.13.6(h) Paid sick leave shall not be granted during a period of unpaid leave.

Payment during the initial 3 months of service

- 11.13.7 Paid sick leave which may be granted to a staff member, other than a seasonal or relief staff member, in the first 3 months of service shall be limited to 5 days paid sick leave, unless the Secretary approves otherwise. Paid sick leave in excess of 5 days granted in the first 3 months of service shall be supported by a satisfactory medical certificate.
- 11.13.8 Seasonal or relief staff - No paid sick leave shall be granted to temporary employees who are employed as seasonal or relief staff for a period of less than 3 months.

11.14 Sick Leave - Requirements for Evidence of Illness

- 11.14.1 A staff member absent from duty for more than 2 consecutive working days because of illness must furnish evidence of illness to the Secretary in respect of the absence.

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11.14.2 In addition to the requirements under subclause 11.13.2, Sick Leave of this determination, a staff member may absent themselves for a total of 5 working days due to illness without the provision of evidence of illness to the Secretary. Staff members who absent themselves in excess of 5 working days in a calendar year may be required to furnish evidence of illness to the Secretary for each occasion absent for the balance of the calendar year.

11.14.3 As a general practice backdated medical certificates will not be accepted. However if a staff member provides evidence of illness that only covers the latter part of the absence, they can be granted sick leave for the whole period if the Secretary is satisfied that the reason for the absence is genuine.

11.14.4 If a staff member is required to provide evidence of illness for an absence of 2 consecutive working days or less, the Secretary will advise them in advance.

11.14.5 If the Secretary is concerned about the diagnosis described in the evidence of illness produced by the staff member, after discussion with the staff member, the evidence provided and the staff member's application for leave can be referred to Medibank Health Solutions for advice.

11.14.5(a) The type of leave granted to the staff member will be determined by the Secretary based on Medibank Health Solutions' advice.

11.14.5(b) If sick leave is not granted, the Secretary will, as far as practicable, take into account the wishes of the staff member when determining the type of leave granted.

11.14.6 The granting of paid sick leave shall be subject to the staff member providing evidence which indicates the nature of illness or injury and the estimated duration of the absence. If a staff member is concerned about disclosing the nature of the illness to their manager they may elect to have the application for sick leave dealt with confidentially by an alternate manager or the human resources section of the Department.

11.14.7 The reference in this clause to evidence of illness shall apply, as appropriate:

11.14.7(a) up to one week may be provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral

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and maxillo facial surgeon or, at the Secretary's discretion, another registered health services provider, or

11.14.7(b) where the absence exceeds one week, and unless the health provider listed in paragraph 11.14.7(a) of this subclause is also a registered medical practitioner, applications for any further sick leave must be supported by evidence of illness from a registered medical practitioner, or

11.14.7(c) at the Secretary's discretion, other forms of evidence that satisfy that a staff member had a genuine illness.

11.14.8 If a staff member who is absent on recreation leave or extended leave, furnishes to the Secretary satisfactory evidence of illness in respect of an illness which occurred during the leave, the Secretary may, subject to the provisions of this clause, grant sick leave to the staff member as follows in respect of:

11.14.8(a) recreation leave, the period set out in the evidence of illness;

11.14.8(b) extended leave, the period set out in the evidence of illness if such period is 5 working days or more.

11.14.9 Subclause 11.14.8 applies to all staff members other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.

11.15 Sick Leave to Care for a Family Member

11.15.1 Where family and community service leave provided for in clause 11.5 of this determination is exhausted or unavailable, a staff member with responsibilities in relation to a category of person set out in subclause 11.15.4 of this determination who needs the staff member's care and support, may elect to use available paid sick leave, subject to the conditions specified in this clause, to provide such care and support when a family member is ill.

11.15.2 The sick leave shall initially be taken from the sick leave accumulated over the previous 3 years. In special circumstances, the Secretary may grant additional sick leave from the sick leave accumulated during the staff member's eligible service.

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11.15.3 If required by the Secretary to establish the illness of the person concerned, the staff member must provide evidence consistent with subclause 11.14, Sick Leave - Requirements for Evidence of Illness of this determination.

11.15.4 The entitlement to use sick leave in accordance with this clause is subject to:-

11.15.4(a) the staff member being responsible for the care and support of the person concerned; and

11.15.4(b) the person concerned being:-

- (i) a spouse of the staff member; or
- (ii) a de facto spouse being a person of the opposite sex to the staff member who lives with the staff member as her husband or his wife on a bona fide domestic basis although not legally married to that staff member; or
- (iii) 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 or legal guardian), grandparent, grandchild or sibling of the staff member or of the spouse or de facto spouse of the staff member; or
- (iv) a same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis; or a relative of the staff member who is a member of the same household, where for the purposes of this definition:-

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

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11.16 Sick Leave - Workers Compensation

- 11.16.1 The Secretary shall advise each staff member of the rights under the *Workers Compensation Act 1987*, as amended from time to time, and shall give such assistance and advice, as necessary, in the lodging of any claim.
- 11.16.2 A staff member who is or becomes unable to attend for duty or to continue on duty in circumstances which may give the staff member a right to claim compensation under the *Workers Compensation Act 1987* shall be required to lodge a claim for any such compensation.
- 11.16.3 Where, due to the illness or injury, the staff member is unable to lodge such a claim in person, the Secretary shall assist the staff member or the representative of the staff member, as required, to lodge a claim for any such compensation.
- 11.16.4 The Secretary will ensure that, once received by the Department, a staff member's workers compensation claim is lodged by the Department with the workers compensation insurer within the statutory period prescribed in the *Workers Compensation Act 1987*.
- 11.16.5 Pending the determination of that claim and on production of an acceptable medical certificate, the Secretary shall grant sick leave on full pay for which the staff member is eligible, to the value of the expected workers compensation benefit payable, if necessary, by sick leave without pay or, at the staff member's election by accrued recreation leave or extended leave.
- 11.16.6 If liability for the workers compensation claim is accepted, then an equivalent period of any sick leave taken by the staff member pending acceptance of the claim shall be restored to the credit of the staff member.
- 11.16.7 If a staff member notifies the Secretary that he or she does not intend to make a claim for any such compensation, the Secretary shall consider the reasons for the staff member's decision and shall determine whether, in the circumstances, it is appropriate to grant sick leave in respect of any such absence.
- 11.16.8 A staff member may be required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act. If a staff member refuses to submit to a medical examination without an acceptable reason, the staff member

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shall not be granted available sick leave on full pay until the examination has occurred and a medical certificate is issued indicating that the staff member is not fit to resume employment.

11.16.9 If the Secretary provides the staff member with employment which meets the terms and conditions specified in the medical certificate issued under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and, without good reason, the staff member fails, to resume or perform such duties, the staff member shall be ineligible for all payments in accordance with this clause from the date of the refusal or failure.

11.16.10 No further sick leave shall be granted on full pay if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*.

11.16.11 Nothing in this clause prevents a staff member from appealing a decision or taking action under other legislation made in respect of:

- 11.16.11(a) the staff member's claim for workers compensation;
- 11.16.11(b) the conduct of a medical examination by a Government or other Medical Officer;
- 11.16.11(c) a medical certificate issued by the examining Government or other Medical Officer; or
- 11.16.11(d) action taken by the Secretary either under the *Workers Compensation Act 1987* or any other relevant legislation in relation to a claim for workers compensation, medical examination or medical certificate.

11.17 Sick Leave - Claims Other Than Workers Compensation

11.17.1 If the circumstances of any injury to or illness of a staff member give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*, sick leave on full pay may, subject to and in accordance with this clause, be granted to the staff member on completion of an acceptable undertaking that:

- 11.17.1(a) any such claim, if made, will include a claim for the value of any period of paid sick leave granted by the Department to the staff member; and

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11.17.1(b) in the event that the staff member receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the staff member will repay to the Department the monetary value of any such period of sick leave.

11.17.2 Sick leave on full pay shall not be granted to a staff member who refuses or fails to complete an undertaking, except in cases where the Secretary is satisfied that the refusal or failure is unavoidable.

11.17.3 On repayment to the Department of the monetary value of sick leave granted to the staff member, sick leave equivalent to that repayment and calculated at the staff member's ordinary rate of pay, shall be restored to the credit of the staff member.

11.18 Special Leave

Special Leave - Jury Service

11.18.1 A staff member shall, as soon as possible, notify the Secretary of the details of any jury summons served on the staff member.

11.18.2 A staff member who, during any period when required to be on duty, attends a court in answer to a jury summons shall, upon return to duty after discharge from jury service, furnish to the Secretary a certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of attendances by the staff member during any such period and the details of any payment or payments made to the staff member under section 72 of the *Jury Act* 1977 in respect of any such period.

11.18.3 When a certificate of attendance on jury service is received in respect of any period during which a staff member was required to be on duty, the Secretary shall grant, in respect of any such period for which the staff member has been paid out-of-pocket expenses only, special leave on full pay. In any other case, the Secretary shall grant, at the sole election of the staff member, available recreation leave on full pay or leave without pay.

Witness at Court - Official Capacity

11.18.4 When a staff member is subpoenaed or called as a witness in an official capacity, the staff member shall be regarded as being on duty. Salary and any expenses properly and reasonably incurred by the staff member in connection with the staff member's appearance at court as a witness

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in an official capacity shall be paid by the Department.

Witness at Court - Other than in Official Capacity - Crown Witness

11.18.5 A staff member who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory of the Commonwealth) shall:

11.18.5(a) be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay; and

11.18.5(b) pay into the Treasury of the State of New South Wales all money paid to the staff member under or in respect of any such subpoena or call other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.

Association Witness

11.18.6 A staff member called by the Association to give evidence before an Industrial Tribunal or in another jurisdiction shall be granted special leave by the Department for the required period.

Called as a witness in a private capacity

11.18.7 A staff member who is subpoenaed or called as a witness in a private capacity shall, for the whole of the period necessary to attend as such a witness, be granted at the staff member's election, available recreation leave on full pay or leave without pay.

Special Leave - Examinations

11.18.8 Special leave on full pay up to a maximum of 5 days in any one year shall be granted to staff members for the purpose of attending at any examination approved by the Secretary.

11.18.9 Special leave granted to attend examinations shall include leave for any necessary travel to or from the place at which the examination is held.

11.18.10 If an examination for a course of study is held during term or semester within the normal class timetable and study time has been granted to the staff member, no further leave is granted for any examination.

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Special Leave - Union Activities

11.18.11 Special leave on full pay may be granted to staff members who are accredited Association delegates to undertake the following Association activities:

- a) Annual or biennial conferences of the Association;
- b) Meetings of the Association's Executive, Committee of Management or Councils;
- c) Annual conference of the Unions NSW and the biennial Congress of the Australian Council of Trade Unions;
- d) Attendance at meetings called by the Unions NSW involving the Association which requires attendance of a delegate;
- e) Attendance at meetings called by the Secretary, as the employer for industrial purposes, as and when required;
- f) Giving evidence before an Industrial Tribunal as a witness for the Association;
- g) The following training courses:
 - (1) Accredited Occupational Health and Safety (OH&S) courses and any other accredited OH&S training for OH&S Committee members. The provider(s) of accredited OH&S training courses and the conditions on which special leave for such courses will be granted, shall be negotiated between the Secretary and the Association under a local arrangement pursuant to clause 19, Local Arrangements of this determination.
 - (2) Courses organised and conducted by the Trade Union Education Foundation or by the Association or a training provider nominated by the Association. A maximum of 12 working days in any period of 2 years applies to this training and is subject to:
 - (a) The operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;

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- (b) Payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc;
 - (c) All travelling and associated expenses being met by the staff member or the Association;
 - (d) Attendance being confirmed in writing by the Association or a nominated training provider
- h) Reasonable travelling time to and from the above conferences, meetings and training courses.
- 11.18.12 The Secretary must be notified in writing by the Association or, where appropriate, by the accredited delegate as soon as the date and/or time of the meeting, conference or other accredited activity is known

Return Home When Temporarily Living Away from Home

- 11.18.13 Sufficient special leave shall be granted to a staff member who is temporarily living away from home as a result of work requirements. Such staff member shall be granted sufficient special leave once a month before or after a weekend or a long weekend or, in the case of a shift worker before or after rostered days off to return home to spend two days and two nights with the family. If the staff member wishes to return home more often, such staff member may be granted recreation leave or extended leave to credit or leave without pay, if the operational requirements allow.

Return Home When Transferred to New Location

- 11.18.14 Special leave shall be granted to a staff member who has moved to the new location ahead of dependants, to visit such dependants, subject to the conditions specified in the Crown Employees (Transferred Employees Compensation) Award.

National Aborigines and Islander Day of Commemoration Celebrations

- 11.18.15 A staff member who identifies as an Indigenous Australian shall be granted up to one day special leave per year to enable the staff member to participate in the National Aborigines and Islander Day of Commemoration Celebrations. Leave can be taken at any time during

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NAIDOC week, or in the weeks leading up to and after NAIDOC week as negotiated between the supervisor and staff member.

Special Leave - Other Purposes

- 11.18.16 Special leave on full pay may be granted to staff members by the Secretary for such other purposes, subject to the conditions specified in the Personnel Handbook at the time the leave is taken.

Matters arising from domestic violence situations

- 11.18.17 When the leave entitlements referred to in clause 11.19, Leave for Matters Arising From Domestic Violence, have been exhausted, the Secretary shall grant up to five days per calendar year to be used for absences from the workplace to attend to matters arising from domestic violence situations.

11.19 Leave for Matters Arising from Domestic Violence Situations

- 11.19.1 The definition of domestic violence is found in clause 2.6 of this determination.
- 11.19.2 Leave entitlements provided for in clause 11.5, Family and Community Service Leave, clause 11.13, Sick Leave and clause 11.15, Sick Leave to Care for a Family Member, may be used by staff members experiencing domestic violence.
- 11.19.3 Where the leave entitlements referred to in subclause 11.19.2 are exhausted, the Secretary shall grant Special Leave as per clause 11.18.17.
- 11.19.4. The Secretary will need to be satisfied, on reasonable grounds, that domestic violence has occurred and may require proof presented in the form of an agreed document issued by the Police Force, a Court, a Doctor, a Domestic Violence Support Service or Lawyer.
- 11.19.5 Personal information concerning domestic violence will be kept confidential by the agency.
- 11.19.6 The Secretary, where appropriate, may facilitate flexible working arrangements subject to operational requirements, including changes to working times and changes to work location, telephone number and email address.

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12. UNIFORMS, PROTECTIVE CLOTHING

- 12.1 Where an employee is required to wear a uniform, cap, coat, overall or other uniform dress the same shall be provided by the school and shall be laundered by the school at the school's expense.

Where, by mutual agreement, the laundering is done by the employee or the principal having refused, neglected or failed to launder the articles and laundering is done by the employee, the employee shall be paid the allowances set out in Item 4 of Table 2 - Other Rates and Allowances, of schedule 1, Monetary Rates.

- 12.2 Suitable protective clothing shall be provided, upon request, to employees who are to load or unload trucks or customers' vehicles.

13. CLEANING DUTIES

- 13.1 It is part of an employee's duties to perform cleaning functions incidental to their work. Without limiting the generality of the foregoing, the dusting of shelves and of stock, the sweeping up of string and wrapping around counters, the cleaning of implements and fixtures used in the work, and the cleaning (including vacuum cleaning) of the immediate work area, shall be so included.
- 13.2 An employee shall not be required to wet wash floors, clean lavatories, sweep pavements or clean the exteriors of windows other than for the removal of occasional defacements.
- 13.3 An employee shall not be required to carry out systematic cleaning duties which go beyond the incidental functions as outlined in sub-clause 13.1.

14. FLEXIBILITY OF WORK

- 14.1 A principal may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.
- 14.2 Employees shall take all reasonable steps to achieve quality, accuracy and completion of any job or task assigned to the employee.
- 14.3 Employees shall not impose any restrictions or limitations on a reasonable review of work methods or standard work times.

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15. DISPUTE SETTLEMENT PROCEDURES

- 15.1 The procedure for the resolution of grievances and industrial disputation concerning matters arising under this determination shall be in accordance with the following procedural steps:

Procedure relating to a grievance of an individual employee

- 15.2 The employee shall notify the Principal (in writing or otherwise) as to the substance of the grievance, request a meeting with the Principal for bilateral discussions and state the remedy sought.
- 15.3. The grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 15.4. Reasonable time limits must be allowed for discussion at each level of authority.
- 15.5 At the conclusion of the discussion, the Principal must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- 15.6 While a procedure is being followed, normal work must continue.
- 15.7 The employee may be represented by an industrial organisation of employees for the purpose of each procedure.

Procedure for a dispute between the Principal and employees

- 15.8 A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- 15.9 Reasonable time limits must be allowed for discussion at each level of authority.
- 15.10 While a procedure is being followed, normal work must continue.
- 15.11 The employees may be represented by an industrial organisation of employees for the purpose of each procedure.

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16. DEDUCTION OF UNION MEMBERSHIP FEES

- 16.1 The Department shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
- 16.1.1 the employee has authorised the Department to make such deductions in accordance with sub-clause 16.2 herein;
 - 16.1.2 the Association shall advise the Department of the amount to be deducted for each pay period applying at the Department and any changes to that amount;
 - 16.1.3 deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee; and
 - 16.1.4 there shall be no requirement to make deductions for casual employees with less than two months' service (continuous or otherwise).
- 16.2 The employee's authorisation shall be in writing and shall authorise the deduction of an amount of Union fees (including any variation in that fee effected in accordance with the Union rules) that the Union advises the Department to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the Department without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- 16.3 Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the Department's election, together with all necessary information to enable the reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
- 16.3.1 where the Department has elected to remit on a weekly or fortnightly basis, the Department shall be entitled to retain up to five per cent of the monies deducted; and
 - 16.3.2 where the Department has elected to remit on a monthly or quarterly basis, the Department shall be entitled to retain up to 2.5 per cent of the monies deducted.
- 16.4 Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking

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effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.

- 16.5 The Union shall advise the Department of any change to the amount of membership fees made under its rules, provided that this does not occur more than once in any calendar year. Such advice shall be in the form of a schedule of fees to be deducted specifying either weekly, fortnightly, monthly, or quarterly as the case may be. The Union shall give the Department a minimum of two months' notice of any such change.
- 16.6 An employee may at any time revoke in writing an authorisation to the Department to make payroll deductions of Union membership fees.
- 16.7 Where an employee who is a member of the Union and who has authorised the Department to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the Department in order for payroll deductions of union membership fees to cease.

17. ALLOWANCES AND/OR ADDITIONAL RATES

- 17.1 An employee who occasionally uses his/her car by agreement with the Principal, on official business, shall be paid an allowance for each kilometre so travelled as set out in Item 5 of Table 2 of schedule 1, Monetary Rates.

18. TRAVELLING TIME, EXPENSES, ALLOWANCES, ETC.

- 18.1 If an employee is required by the Department to temporarily transfer from one school to another, the employee shall be allowed any extra cost of travelling and shall be paid at ordinary rates for any excess time occupied in travelling.
- 18.2 The employee shall be paid for all time spent in excess of the time usually spent by themselves in travelling to or from their home to the school at their ordinary rate of pay, except on a Sunday or a public holiday, when payment shall be at the rate of time and one-half.
- 18.3 The employee also shall be paid any extra cost of travelling and shall be provided with first-class hotel accommodation at the Department's expense and where rail travel is necessary, first-class rail ticket and sleeping car accommodation, where available, shall be provided.

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- 18.4 Where an employee is required to work after the ordinary ceasing time prescribed by this award until it is too late to travel by train, omnibus, vessel, or other regular conveyance to his or her usual place of residence, the Department shall provide either proper conveyance or the fare for such conveyance to the employee's usual place of residence.

19. LOCAL ARRANGEMENTS

- 19.1 Local arrangements may be entered into with the agreement of both the Secretary and the Association in relation to any matter contained in this determination.
- 19.2 Any local arrangement negotiated between the Secretary and the Association must be:
- 19.2.1 approved by the Secretary;
 - 19.2.2 approved in writing by the General Secretary of the Association; and
 - 19.2.3 contained in a formal document, such as a memorandum of understanding, industrial instrument; and
 - 19.2.4 include a clause allowing either party to terminate the arrangement by giving 12 months' notice.

20. MONETARY RATES Schedule 1

- 20.1 The rates of pay for each classification are set out at Table 1 – Wages and Table 1A – Juniors.
- Other rates and allowance amounts are set out at Table 2 – Other Rates and Allowances.
- 20.2 The rates of pay at Table 1 and at item 3 of Table 2 shall be adjusted in line with adjustments provided by the *Crown Employees Wages Staff (Rates of Pay) Award*.
- All other rates shall be adjusted by the same percentage as that applied to comparable allowances in the *Crown Employees (Public Service Conditions of Employment) Award 2009* or successor as amended from time by the NSW Treasury.

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Table 1 - Wages

Description	16.12.14 Per Week \$
Canteen Assistant,	714.50
Canteen Supervisor	
Without the duty of buying -	
In charge of from nil to 4 assistants	727.90
In charge of from 5 to 12 assistants	738.30
In charge of from 13 to 25 assistants	751.20
In charge of over 25 assistants	760.80
(ii) With the duty of buying -	
In charge of from nil to 4 assistants	729.70
In charge of from 5 to 12 assistants	741.20
In charge of from 13 to 25 assistants	756.40
In charge of over 25 assistants	765.10

Notation: Hourly rates of pay for full-time, part-time and casual employees shall be calculated to the nearest half cent.

Table 1A - Juniors

	Percentage of the canteen assistant's wage
Under 16 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

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Table 2 - Other Rates & Allowances

Item No.	Clause No.	Brief Description	Amount \$
1	8.1	Meal Allowances	13.90
2	8.2	Breakfast Allowance	7.70
3	5.1	Loading for casual employees working on a Saturday: Adult Employees Employees under 21 years of age	7.80 per shift 5.10 per shift
4	13.1	Laundrying Allowance (if any article requires ironing): Full-time employee Part-time and casual employee Maximum payment	10.20 per week 3.60 per shift 10.20 per week
		Laundrying Allowance (if none of the articles require ironing): Full-time employee Part-time and casual employee Maximum payment	6.00 per week 2.10 per shift 6.00 per week
5	35(iv)	Allowance for kilometre travelled: car under and including 2000cc car over 2000cc	0.59 per km 0.64 per km

21. SAVINGS PROVISIONS

- 21.1 This clause applies to school canteen employees as defined, who are employed at a school as at the time of the making of this determination.

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- 21.2 The provisions of this determination shall not affect any entitlements or employment status for existing employees when this determination is made, if such provisions are better than the provisions contained in this determination. Such entitlements are hereby expressly preserved for those employees.

22. DATE OF EFFECT

- 22.1 This determination shall take effect from the date it is signed and remain in force until rescinded or replaced.

Signed: Michele Bruniges

Michele Bruniges
SECRETARY, DEPARTMENT OF EDUCATION

Date: 7 / 12 / 2015