

DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

DETERMINATION NO. 5 OF 2016

FAMILY AND COMMUNITY SERVICE LEAVE AND PERSONAL CARER'S LEAVE

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

1. Application

- 1.1 This determination will apply to all permanent and temporary school based teachers at government schools, other than teachers employed at the Saturday School of Community Languages.
- 1.2 This Determination rescinds and replaces Determination 1 of 1998.

2. Family and Community Service Leave

- 2.1 Teachers can utilise family and community service leave to meet a range of family activities and community service responsibilities. This could include a need to respond to an emergency situation or in the event of planned absences for family and community service responsibilities where some advance notice is given.
- 2.2 Family and community service leave is available to permanent part-time teachers on a pro rata basis.
- 2.3 A teacher's eligibility for family and community service leave for family and community activities and responsibilities or in a case of pressing necessity will be determined in accordance with the definitions set out in sub clause 3.8.
- 2.4 The maximum amount of family and community service leave which may be granted to a teacher is:
 - two and a half days in the staff member's first year of service;
 - two and a half days in the staff member's second year of service;
 - and
 - an accrual of one day per year thereafter.
- 2.5 Where family and community service leave has been exhausted, additional paid family and community service leave of up to two (2) days may be granted on a discrete 'per occasion' basis to a teacher on the death of a family member. For the purposes of this clause a 'family member' means a class of person as defined in sub clause 3.8.

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

3. Use of Sick Leave to Care for Dependants

- 3.1 When family and community service leave has been exhausted, a teacher with responsibilities to a class of person defined in sub clause 3.8 who needs their care and support shall be entitled to use the existing balance of sick leave accrued from the past three (3) years. The three (3) year period is determined as being the three (3) calendar years immediately preceding the first day of personal carer's leave.

- 3.2 The Secretary may, in exceptional circumstances, make a grant of additional sick leave. In these circumstances the grant of any further leave is limited to a teacher's sick leave balance minus leave granted under subclause 3.1.

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

- the amount of leave already granted for the current absence;
 - the seriousness of the illness of the dependant;
 - whether the teacher is the only person who can provide care to the dependant; and
 - whether the illness of the dependant is such as to require ongoing long term care.
- 3.3 The teacher shall, if required, 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. Applications for leave in excess of three (3) days must be supported by either a medical certificate or statutory declaration.
- 3.4 The teacher has the right to choose the method by which the grounds for leave are established, that is, by production of either a medical certificate or statutory declaration.
- 3.5 The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- 3.6 A teacher shall, wherever practicable, give the Department notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the teacher, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the teacher to give prior notice of absence, the teacher shall notify the Department by telephone of such absence at the first opportunity on the day of absence.

3.7 In normal circumstances, a teacher will not be granted personal carer's leave where another person has taken leave to care for the same person.

3.8 The entitlement to use sick leave is subject to:

- (i) the teacher being responsible for the care and support of the person concerned; and
- (ii) the person concerned being:
 - a spouse of the teacher; or
 - a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the teacher or spouse or de facto spouse of the teacher; or
 - a same sex partner who lives with the teacher as the de facto partner of that teacher on a bona fide domestic basis; or
 - a relative of the teacher who is a member of the same household, where for the purposes of this sub clause:
 - 1. "relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures.
 - 2. "affinity" means a relationship that one spouse or partner has to relatives of the other; and
 - 3. "household" means a family group living in the same domestic dwelling.

4. Date of Effect

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

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

- 4.3 Notwithstanding the provisions of sub-clause 4.1, the Department will continue to apply the provisions of the rescinded Determination 1 of 1998 until such time as the provisions of Determination 5 of 2016 are commenced by administrative action.

Signed:



Mark Scott
SECRETARY
DEPARTMENT OF EDUCATION

Date:

19 September 2016