



# **NEW SOUTH WALES TEACHERS FEDERATION**

SUBMISSION TO

**AUSTRALIAN HUMAN RIGHTS COMMISSION**

ON

**PREGNANCY AND RETURN TO WORK DISCRIMINATION**

Authorised by

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**17 December 2013**

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## **New South Wales Teachers Federation**

The New South Wales Teachers Federation is the state registered trade union with coverage of NSW public education teachers. Federation represents teachers in New South Wales public pre-schools, infants, primary and secondary schools, Schools for Specific Purposes, teachers working in consultant/advisory positions, teachers in Corrective Services and teachers in NSW TAFE. The current financial membership totals over 69 000 practising permanent, temporary and part-time teachers and student teacher members. Federation is administered by 47 elected union officials and three presidential officers. It is the largest state based public education union in Australia.

## **Parental leave and return to work in NSW public education**

Accessing parental leave and flexible work arrangements for teachers returning to work following parental leave is an issue affected by a range of (sometimes competing) factors in NSW public schools. The Department of Education and Communities, as well as individual schools and teachers, have a duty of care as well as other obligations towards the students enrolled, which cannot be overridden by a teacher's pregnancy or parental responsibilities. A teacher leaving the classroom for any reason and for any length of time must be relieved of duty. In addition, there is a responsibility to ensure that students have access to high quality teaching and learning programs. Any arrangements to accommodate a teacher's pregnancy or parenting responsibilities must take the school's operational needs into account.

Some accommodations for pregnant teachers and those with parenting responsibilities are negotiated at the school level. Without adequate resourcing provided by the Department, individual principals are often put in the position where they must choose between disadvantaging the pregnant (or post-parental leave) teacher, the other staff of the school or the students. For example, in a rural or remote school it can be difficult to find an appropriately qualified teacher to work on a temporary part-time basis. This creates a challenge for a principal in approving a permanent teacher's application for part-time maternity leave. The Department has nothing in place to provide incentives to take on temporary part-time work in this way.

Leaving principals to manage competing demands without employer support means that the cumulative effect of decisions made in these circumstances can be that a pattern of discrimination emerges across the state. In order to meet its obligations under anti-discrimination, it is the employer who must make it easy for schools to accommodate pregnancy and parenting responsibilities by providing adequate resources and, where necessary, incentives.

Where entitlements have been won, are regulated and are adequately resourced, there has been much success in improving work arrangements for teachers with children. As a result of Federation campaigning, teachers in NSW public schools have had access to part-time work arrangements since the early 1990s. Many teachers have accessed this entitlement and part time work is now readily accepted in many schools.

The Federation also fought to achieve the temporary teacher classification in the early 2000s. A temporary teacher is one who is employed in a single engagement for a period of four weeks or more full-time or for two terms or more on a part-time basis. A teacher is employed as a casual if the engagement is for shorter time periods. The classification of temporary teachers recognises the fact that teachers employed on a non-permanent basis for extended periods of time are doing effectively the same job as permanent teachers and should have access to the same entitlements. Temporary teachers have access to all the same entitlements as permanent teachers (on a pro-rata basis if necessary). This means that many temporary teachers have been able to access paid maternity leave; something not previously possible.

## Teacher entitlements in NSW public schools and TAFE

A teacher's entitlements around pregnancy and return to work following parental leave varies amongst the Federation's membership. The most substantial entitlements are for permanent teachers. Temporary teachers have access to the same paid entitlements and some of the same unpaid entitlements only where the anticipated date of birth (ADB) falls within the period of a temporary engagement. While casual teachers (or part-time casual in TAFE) have access to limited entitlements, it is extremely rare for these teachers to meet the eligibility requirements for these. The entitlements are very similar for teachers in schools and TAFE colleges. However, the casualisation of the workforce in TAFE, with more than 70 percent of teachers being classified as part-time casual, means that in practice most TAFE teachers are not able to access any entitlements to accommodate parenting responsibilities.

There are three types of parental leave: maternity, adoption and parental leave. Maternity leave is only available to a parent who gives birth to the child, adoption leave to a parent adopting a child and parental leave is available to teachers for whom maternity or adoption leave do not apply. There are restrictions on both parents taking simultaneous parental leave. While there are differences in the paid portion of the entitlement of each of these forms of leave, the unpaid entitlements are mostly the same. The table below provides a summary of these entitlements. The Department of Education and Communities' Determination on maternity leave and the Federation's information leaflet for members regarding these three forms of leave are attached as appendices and explain the entitlements in more detail.

### *Parental leave entitlements for teachers in NSW public schools and TAFE*

	<b>Permanent teachers</b>	<b>Temporary teachers</b>	<b>Casual teachers</b>
<b>Paid entitlement</b>	<ul style="list-style-type: none"> <li>• Maternity leave: 14 weeks at full pay, 28 weeks at half pay, or a combination</li> <li>• Adoption leave: 14 weeks at full pay, 28 weeks at half pay, or a combination</li> <li>• Parental leave: one week at full pay or two weeks at half pay</li> </ul>		<ul style="list-style-type: none"> <li>• Lump sum payment equivalent to 14 weeks' pay in lieu of maternity leave.</li> <li>• No entitlement for adoption or parental leave</li> </ul>
Eligibility	After the teacher has completed 40 weeks of continuous service (a once only requirement)	When the teacher has completed 40 weeks of continuous service within a two year period immediately preceding the ADB.	When the teacher has completed 40 weeks continuous full-time service immediately preceding the ADB.
<b>Unpaid entitlement</b>	12 months	While the entitlements are the same as for permanent teachers, temporary engagements do not extend beyond one calendar year.	<ul style="list-style-type: none"> <li>• One week for school teachers who have employment at the time.</li> <li>• TAFE 'regular casuals' entitled to 12 months unpaid leave.</li> </ul>
Eligibility	All permanent teachers		
<b>Right to request</b>	<ul style="list-style-type: none"> <li>• To extend unpaid maternity leave for a further 12 months</li> <li>• To work on a part-time basis until the child reaches school age.</li> </ul>		
<b>Lactation breaks</b>	A maximum of two paid breaks of up to 30 minutes each per day for teachers who are lactating and are working more than 4 hours per day.		No entitlement

## **Types of challenges faced by teachers**

There are some examples of good policies and practice around pregnancy and return to work operating in NSW Public education in NSW Public education settings. However, some still face challenges accessing their entitlements. In addition, some areas of Departmental policy are inadequate for truly eliminating discrimination on the grounds of pregnancy or parenting responsibilities.

The Teachers Federation is contacted by members on a wide range of matters, including alleged pregnancy discrimination. Members may raise issues at local association meetings, by making individual contact with their local area organiser, or by contacting Federation's Communications Centre. Of the experiences which may be perceived as discrimination based on pregnancy or return to work with which members seek the union's assistance, some are more common than others.

The types of challenges typically reported by teachers will vary, depending on the employment status of the teacher. However, this does not necessarily mean that they are exclusively experienced by teachers in that employment category. Based on an examination of Federation's communications records over a 12 month period and anecdotal evidence from union organisers' experiences, primary teachers are more likely to experience alleged discrimination than secondary teachers; and permanent teachers are more likely to pursue their claim than temporary and casual teachers.

### **Challenges for permanent teachers**

The most common challenges for permanent teachers relate to negotiation around the right to request part-time leave options until the child reaches school age. Teachers may have their application for part-time maternity leave declined. Teachers in promotions positions (such as head teachers or assistant principals) are more likely than classroom teachers to experience employer resistance to working part-time, including facing pressure to take a demotion. Even teachers who had their application to work part-time approved may face difficulties in negotiating the days they will work. Some may not be able to match up work days with availability of childcare; some may not receive notice of days allocated at the school in time to secure childcare at all. Equally there are challenges for schools in these negotiations. In some schools (those in rural or hard to staff areas), it may be very difficult to find a casual teacher to undertake the other fraction of the teacher's workload. These challenges are not always adequately addressed by the systems put in place by the employer.

In schools, principals (or their nominees) act as approving officers for teachers' leave applications (including part-time forms of parental leave) on behalf of the Department of Education and Communities. Sometimes this means that teachers' applications for leave are declined, whether they relate to an entitlement or a right to request. It is possible to appeal the principal's decision (either to the Department or by seeking the assistance of the Teachers Federation), and typically (though not always) this works out in the favour of the teacher applying for leave, provided their application was in accordance with the Determination.

As a very large employer, the NSW Department of Education and Communities usually has the capacity to accommodate flexible work practices as part of a teacher's right to request. However, teachers do not always appeal the negative decision for a range of reasons. They may not know they are able to appeal, they may not seek the advice of the union (or be a member), or they may decide they do not want to "rock the boat" for professional reasons. Principals are required to consider a range of sometimes competing priorities when making these decisions. In many cases, the individual decision of the principal is not one of discrimination, but of trying to best manage these competing priorities and ensure that teaching and learning conditions in the school are optimised. However, if a cumulative pattern emerges from such decisions across the state which disadvantages teachers who are pregnant or have parenting responsibilities, then the employer has an obligation to provide the support necessary at the school level to accommodate teachers' needs.

discriminatory behaviour has occurred. Departmental policy states that (outside of Award provisions) the allocation of duties in schools is largely at the principal's discretion. For example, in primary schools a teacher working part-time may be allocated responsibility for covering a number of classes while other teachers have their release from face to face teaching (RFF), rather than be allocated a single class (which would then be shared with another teacher working the other days). Allocations have to be made, and somebody has to do the RFF role, but unless a teacher runs a specific program, such as music or a language, it is rare that teachers volunteer for this role year after year. Again, principals have to take a range of demands into account when allocating duties. To minimise perceived disruption to students the RFF role may be allocated to part-time teachers or those expecting to leave mid-year on maternity leave. In high schools, these teachers may find their senior classes taken from them for similar reasons. Across the system these decisions have the cumulative impact of restricting the professional experiences (and associated opportunities for development) of teachers with parenting responsibilities.

### **Challenges for temporary teachers**

Temporary teachers face greater challenges in accessing entitlements due to the precarious nature of their employment. While the union is contacted about instances of alleged discrimination, organisers find that temporary teachers are less likely to want to pursue the matter than permanent teachers. This is directly linked to their status as temporary employees and the fact that their continued employment is often dependent upon the decisions of the principal, who, in the cases where the member has contacted the union, may be perceived as the discriminator.

The most common experience of pregnancy discrimination for temporary teachers (about which the union is contacted) is a failure to secure a temporary engagement after falling pregnant. A temporary teacher is only entitled to any form of paid parental leave if the anticipated date of birth (or date of taking custody of the child in the case of adoption leave) falls within a temporary engagement. Only in the very small number of cases relating to specific educational programs (such as Reading Recovery) are temporary engagements allowed to be longer than one calendar year. In many schools they are arranged only for a term at a time. This means that unless a pregnancy is very conveniently timed, it is quite rare for a temporary teacher's pregnancy not to be known when a temporary engagement covering the ADB is signed. While it is unlawful to fail to offer a person employment due to their pregnancy, the union is contacted by a number of pregnant women who are the only temporary teacher on a school's books to fail to secure an engagement for the following year. It can be difficult to pursue as discrimination because a school often has many reasons why the teacher failed to secure an engagement for the following year. In some circumstances, these reasons are legitimate and discrimination has not occurred, but the pattern that emerges from contact made to the union by members across the state suggests that, at least in some cases, this form of discrimination exists.

The Department's Determinations related to different forms of parental leave apply to permanent and temporary teachers. However, due to the fact that temporary engagements are almost always for one year or less, much of the entitlement is not a genuine one for temporary teachers. It is difficult enough for some temporary teachers to secure an engagement while pregnant. It is hard to imagine that many would be securing additional engagements while on full-time parental leave. No Federation officer can recall an example of a temporary teacher securing a (full-time) engagement and then asserting the right to request part-time work. This does not mean that temporary part-time arrangements do not exist for parents returning to work at the school level, but they rely on a sympathetic principal and (usually) an established relationship between the temporary teacher and the school. For temporary teachers, part-time work following parental leave is great for those who get it, but to assume that it is an entitlement based on the determination would be misleading.

### **Challenges for casual teachers**

Casual teachers have very little in the way of entitlements to the different forms of parental leave. The Department does have a determination which relates to casual teachers' entitlements to various forms of leave. Unpaid parental and adoption leave of one week is available to those casual teachers who have

employment at the time of birth. Casual teachers are entitled to a lump sum maternity payment equivalent to 14 weeks' pay, provided they have completed 40 weeks full-time continuous service prior to the ADB. However, since the introduction of the temporary classification in 2001, it would be extremely rare for a casual teacher to achieve this service requirement. A casual teacher would have to work every single school day (with the exception of the first three weeks of the school year). If a teacher secures an engagement of four weeks or more full time, then that engagement must be classified as temporary. This means that most teachers working only as casuals will almost invariably have breaks in service disqualifying their entitlements.

The use of the temporary classification has significantly increased entitlements in this area for non-permanent teachers. However, for TAFE teachers, changing work practices mean that more than 70 percent are now employed as casuals. This has the consequence of eroding maternity and parental leave entitlements.

### **Challenges around lactation breaks**

While the Department of Education and Communities has issued a determination outlining a teacher's entitlement to a maximum of two lactation breaks of up to thirty minutes each day, it has allocated no resources to cover this entitlement. A lactating teacher cannot simply walk away from her class for thirty minutes as the teacher and the school have a duty of care to the students. This means that somebody has to cover for the absent teacher. Without providing additional resources there is no way to administer this entitlement without disadvantaging somebody. By not providing resources for this entitlement, the Department is effectively discriminating against lactating teachers. Different options are proposed for schools, none of which truly supports a woman's breastfeeding:

- Having a teacher express during lunch and recess breaks denies her right to her own lunch break.
- Reducing the playground duty allocation for one teacher translates to additional duties for other teachers.
- Having a teacher express during her release time only increases the amount of preparation work that she must do outside of hours.
- Providing a teacher with additional release time inevitably creates additional workload for others in the school.

This can create resentment among others, or additional stress for the lactating mother. In addition, some schools struggle to find a private space to provide for the mother, with hundreds of people competing for limited spaces. In an environment where everybody already has a very demanding workload, these options serve to potentially build stress and resentment in the workplace.

As a result of the possible tensions arising from these options, the Department's policy is not effectively promoting ongoing breastfeeding in practice. Of the issues about which the union is contacted relating to alleged pregnancy and return to work discrimination, accessing lactation breaks is not one of the most common. However, anecdotal evidence suggests that this is more because people are reluctant to request lactation breaks, due largely to the knowledge that the only available arrangements will significantly impact on their colleagues people's workloads.

### **Prevalence of discrimination**

It is difficult to establish the prevalence of discrimination around pregnancy and return to work within NSW public schools and TAFE Colleges. As has already been established in the language used in this submission, much of the data provided relies on anecdotal evidence. A certain amount of data can be generated from an analysis of the union's communication records. While this is indicative of the types of issues experienced by teachers, it should be viewed as a sample rather than as comprehensive prevalence data. Not every member who experiences discrimination contacts the union for assistance. In addition, due to the way that the correspondence is categorised, to do a full assessment of the data would require reading through many thousands of detailed call records.

In order to establish a sample set of data, a limited assessment was conducted. Over a selected 12 month period, 505 calls were logged in the communications system under the category of "Maternity". Each call has a brief issue description written by the communications advisor during the first conversation with the member. The call sheet also contains records of all other communication, including advice e-mailed or conversations with officers of the union. At least 30 were identified as examples of potential discrimination related to pregnancy and return to work following parental leave. From reading through all the correspondence related to these cases, certain patterns emerge. Discrimination was more than twice as likely to be alleged by primary teachers as by secondary teachers. More than two thirds of cases related either to difficulties teachers experienced accessing part-time work or to a temporary teacher failing to secure an engagement for the following year after her pregnancy became known. The remaining calls related to accessing lactation breaks, allocation of duties or pressure to resign or accept demotion.

## **Recommendations**

Where an entitlement is clear in legislation or Departmental policies, and a member contacts the union, this entitlement can usually be secured. However, not everybody contacts the union and not all examples of challenges faced by teachers who are pregnant or have caring responsibilities are covered by a clear, legislated and resourced entitlement. This means that in order to eliminate (or minimise) discrimination in NSW public schools (and other areas), there should be non-negotiable system-wide enforceable policies which are resourced in a way which is fair across the system. The costs of providing entitlements related to pregnancy and return to work should not be borne at the individual school or worksite level, because this increases the likelihood that discrimination will occur as a result of limited school budgets. Some schools, because of the age profile of their teaching staff, are more likely to have parents of young children employed than others. This is not a factor in central allocation of funds.

Based on participation in the unions consultation held by the Human Rights Commission as part of this inquiry, it is clear that pregnancy and return to work discrimination is a bigger problem in other industries than for teachers in NSW public education. However, even in a workforce dominated by women (more than 70 percent), discrimination still occurs. The following recommendations are based on the experiences in NSW public schools and TAFE colleges, but may be more broadly applicable, particularly in the public sector.

1. Specific protections should be provided for temporary and casual employees. These may include a requirement for employers to be more transparent around the issuing of temporary engagements.
2. Appeals and complaints processes should be simple and employers should be responsible for notifying the ability to appeal at the time a request is declined.
3. The right to request should be expanded to reverse the onus of proof. The employer should be required to prove that flexible work arrangements cannot be accommodated when requested. This must be clear to principals (authorising officers) and to those reviewing appeals. These decisions should be considered from a system-wide perspective, not solely an individual school or worksite perspective. The employer should provide reasonable additional resources to accommodate these requests.
4. An enforceable consideration of childcare availability (and other relevant factors related to caring responsibilities) should be included in guidelines for employers in approving part-time work and other relevant work arrangements.
5. Any entitlement which requires release from duties should be resourced on a system-wide level.
6. When employers are developing policies or changing work practices, they should be required to assess them to ensure that they do not (inadvertently) create patterns of discrimination.

### **1. Protection for temporary and casual employees**

It is very difficult to prove that a teacher has failed to secure a temporary engagement as a result of her pregnancy. However, the pattern that emerges from the Federation's communications data suggests that

discrimination is occurring. Typically, organisers of the Federation find that temporary and casual teachers, although they may well contact the union for advice, are more reluctant than their permanent colleagues to pursue an entitlement when facing resistance or potential discrimination, due largely to the precarious nature of their employment.

While securing high levels of permanent employment for teachers in NSW public schools has always been a priority for the NSW Teachers Federation, permanent employment is becoming less common across the Australian workforce. It is clear that accessing entitlements around maternity leave and return to work is much more difficult for temporary and casual workers than for permanently employed workers. The high levels of casualisation in TAFE have made entitlements to parental leave and flexible work arrangements inaccessible for many. Specific provisions are needed for temporary and casual employees to protect pregnant women and workers with parenting responsibilities from further disadvantage as a group. This should be a particular priority in the context of increasing levels of temporary, casual and contract-based employment in the Australian workforce.

## **2. Capacity to appeal decisions**

Decisions to approve applications made under right to request (and even under entitlements) can sometimes be inappropriately declined. While it may not be appropriate to have every leave application approved by somebody who is an expert in employment law and anti-discrimination, teachers (and other workers) could be made aware of their capacity to appeal a decision at the time at which it is declined. This would be a simple step for the employer to take in meeting its responsibility to eliminate discrimination so far as is possible. Where these decisions are devolved to authorising officers, the employer must ensure that adequate resources are available to ensure those decisions don't inadvertently create a pattern of discrimination. It is inappropriate to ask an individual worksite to approve an application for part-time leave or lactation breaks without the employer providing the resources to support that application.

For employers without an appeals mechanism already in place, one should be implemented. Clearly the size of the employer would impact on the capacity to introduce such a process, but for many the process of going to the Anti-Discrimination Board is simply too overwhelming to take on at the same time as having caring responsibilities for very young children.

## **3. Onus of proof in right to request**

Where teachers have been declined access to flexible working arrangements following a period of parental leave, often this relates to perceived difficulties in managing the timetable or class allocations at the school level. These tasks are largely driven by availability of staff and maximising student learning. Typical responses from authorising officers declining access to flexible working arrangements include: that no casual replacement is available; that there are already too many people working part time; or that student learning will be negatively impacted if there is more than one teacher taking the class.

These concerns can be addressed by the employer. Incentives can be provided to attract casuals. Resources can be provided to ensure that job sharing is positive for student learning. The resistance to job sharing grows more out of assumptions based on past practice than necessarily any evidence base that students are disadvantaged by job sharing. This resistance is more common in primary schools than high schools, where students face different teachers for different subjects. Again, this difference in resistance arises out of past practice rather than any evidence which suggests that student need for consistency suddenly changes when beginning high school.

The assumption that student success is dependent on having teachers working full-time means that the onus has been on the teacher seeking flexible work arrangements to find a person with whom to share the teaching load and then to develop a model for job sharing and prove to the principal that it will work. Those seeking flexible working arrangements, even with the right to request in place, have to convince others to give them permission to vary from the 'norm'. The employer provides no additional resources to principals



to support these practices, such as reduction in allocation of duties to allow for communication between teachers sharing a job.

The circumstances which lead to people seeking flexible working arrangements for child rearing purposes typically mean that their responsibilities outside of their paid work demand a lot of their attention and time. This can make it difficult to produce the argument and evidence needed to prove that flexible work arrangements could succeed. Given that decisions around these arrangements are largely made based on cultural norms rather than comprehensive evidence, it would be appropriate to reverse the onus of proof. The employer (particularly a large employer like the NSW Government) has a greater capacity to do this.

#### **4. Childcare availability**

There is ample public conversation about the availability and affordability of childcare at the moment. Teachers are less likely to experience some of the challenges faced by others in the workforce because a school's hours fit well within the typical opening hours of childcare centres. Although for teachers with lengthy travelling times between childcare and the school, it can be difficult to make the journey within an appropriate time for the school's and childcare centre's operating hours. Depending on the location of the school or teacher's residence, the accessibility of childcare varies significantly. Many parents wait for years on childcare placement waiting lists, and there can be almost no capacity to negotiate when it comes to particular days the childcare centre can offer. This can create a conflict with allocations or timetabling in a school.

Recognising the varying realities people face in terms of managing childcare, it should be enforceable that employers consider a person's access to childcare when negotiating work arrangements, including negotiating working days to allow sufficient time to organise childcare.

#### **5. Resourcing of entitlements**

Where an entitlement relating to pregnancy or flexible work arrangements for parenting/caring responsibilities requires that a teacher (or any employee) be relieved of duties, adequate resources must be provided by the employer to facilitate access to the entitlement. To expect fellow employees to simply take on additional workload to accommodate others' childrearing responsibilities is unreasonable and can create resentment in the workplace. This only serves to encourage discrimination and makes many people disinclined to apply for flexible arrangements in the first place.

Where there is concern that flexible work arrangements may disrupt student learning, the employer should provide the resources needed to ensure this doesn't happen. Any cost to the employer would be outweighed by the advantages of retaining skilled people in the workforce. This is particularly important in a profession dominated by women such as teaching.

#### **6. Reviewing policies for discrimination implications**

Sometimes changes in employment practices are implemented for reasons which have nothing to do with pregnancy or return to work, but which have implications for the experience of those with responsibilities for caring for young children. For example, over time the permanent TAFE teaching workforce has been eroded to the point where more than 70 percent of teachers are now employed as casuals. This is promoted as a way of ensuring that teachers have recent industry experience in the skill sets they are teaching. However, this facilitates a systemic discrimination against pregnant teachers and those seeking a return to work after parental leave. Firstly, many have the same experience as temporary school teachers in terms of failing to secure ongoing employment when their pregnancy becomes known. By far the vast majority of TAFE teachers who fall pregnant are not able to access any paid leave and have inferior unpaid leave entitlements. Secondly, the training packages in TAFE are regularly updated in order to keep up with changing demands of the employment market. Any teacher who takes extended time off to care for children finds themselves deskilled with no support from the employer to upgrade their skills. Employers should have responsibility to develop or upgrade policies explicitly designed to overcome discrimination or disadvantage which arises out of other changes in policy or practice. This responsibility should be legislated.

## **Member stories**

As part of the process of putting together this submission, the Federation called for members to share their stories. An article was published in the journal which is posted to all members, and input was sought via associations, asking for members to contact the Federation and share their stories. As a result of these, a number of members wrote brief submissions. These are included in Part 2 of the submission. This section of the submission will not be made public.

## **Appendices**

On the following pages

1. Federation's advice to members regarding maternity, adoption and parental leave
2. Determination under the Teaching Service Act 1980, Determination No. 1 of 2007, Maternity Leave

# L5 Maternity, adoption and parental leave

## General information

### L5.1 Access to entitlements

All permanent teachers have been issued with a log-on and PIN to access their leave entitlements on the Department's intranet. Alternatively, teachers can contact the relevant Employee Services centre at either Newcastle or Wollongong.

Teachers should note that their principal may access their leave records, but must notify the teacher in writing first.

If a teacher believes that her/his leave record is incorrect, that teacher should request an audit of their leave. If there is still a problem the teacher should call the Federation for further assistance.

### L5.2 Right to request

The following information applies to permanent and tem-

porary teachers applying for maternity, adoption and/or parental leave.

Teachers have a right to request:

- an extension of the unpaid portion of leave to a maximum of 24 months
- a return from leave on a part time basis until the child reaches school age
- a period of simultaneous unpaid maternity, adoption and parental leave of up to eight weeks.

The request must be in writing and the Department of Education and Training (DET) must give a response in writing.

If a teacher believes her/his request has been declined unfairly she/he should contact the Federation for assistance.

## Maternity leave

### L5.3 Entitlement for permanent teachers

Paid maternity leave is available to all permanent teachers who have completed 40 weeks continuous service. The 40 weeks continuous service includes:

- Full time casual teaching which merges without a break with permanent or temporary service.
- Previous service with NSW Government departments and instrumentalities provided that there was a break of no more than two months between the two periods of employment.

The 40 weeks continuous service is a once only requirement.

Maternity leave will be unpaid maternity leave if the birth occurs within the first 40 weeks of service after employment or re-employment.

### L5.4 Entitlement for temporary teachers

Teachers who are engaged as temporary teachers and who have taught full time for 40 continuous weeks are entitled to paid maternity leave. Temporary teachers should note that maternity leave taken not more than nine weeks before the anticipated date of birth will count towards the 40 weeks continuous service.

The 40 continuous weeks includes school vacations, periods of paid leave, and periods of leave without pay up to a maximum of five days.

A teacher who was in a full time temporary position at the end of the school year and was available for employ-

ment at the beginning of the new school year will not suffer a break in service provided she has a temporary engagement by the 21st day of the new school year.

In addition, if a temporary engagement is terminated early, continuity of service applies to the original end date of the engagement.

Maternity leave will be unpaid if the 40 weeks continuous service has not been completed.

### L5.5 Entitlement for casual teachers

Casual teachers who have completed 40 weeks continuous service are eligible for maternity payment. The application should be made at least four weeks prior to the date of ceasing duty and must include a medical certificate stating the anticipated date of birth.

Casual teachers should also note that where they are not employed for a period of up to four weeks before the anticipated date of birth, that period will count for the 40 weeks of continuous service.

Eligible casual teachers will receive the equivalent of 14 weeks pay as a lump sum.

There is no time limit on the amount of time the teacher remains unavailable for work, however, teachers should note that a break in service of greater than two months will affect other entitlements such as accrued long service leave.

### L5.6 Application for maternity leave

Applications for maternity leave should be submitted at least one month before the first day of leave and must



be accompanied by a certificate indicating the anticipated date of birth.

### **L5.7 Length of maternity leave**

A teacher is entitled to apply for 12 months maternity leave. In addition, under the Family Provisions Test Case (2005) she has a right to request an extension of the unpaid component for a further 12 month period. If such a request is granted by the employer, the teacher retains her right of return to her substantive position for a total of 24 months.

When the last date of leave occurs during a school term, the leave can be extended to the end of the next school vacation period.

### **L5.8 Paid maternity leave**

A teacher is entitled to 14 weeks paid maternity leave. This can be taken at half pay, full pay or as a lump sum.

There is no requirement to cease work a certain number of weeks before the anticipated date of birth. Paid maternity leave can commence no earlier than nine weeks before the anticipated date of birth but no later than the anticipated date of birth.

### **L5.9 Vacation pay while on maternity leave**

A teacher will be paid for the holidays during maternity leave in proportion to the number of days she has been on duty or on paid leave during the year.

Paid leave includes maternity leave on full pay and half pay and sick leave on full pay and half pay.

Maternity leave on no pay does not accrue vacation pay.

If the full pay part of maternity leave occurs during the holidays, and the teacher would have been entitled to vacation pay she only gets her maternity leave payment, that is, she is not paid twice for the same period of time.

Refer to Welfare and Information leaflet *L7 Vacation leave and vacation pay*.

### **L5.10 Annual leave loading**

This will be paid at the same time as other teachers, that is, in the first pay after November 30. If on unpaid maternity leave it should still be paid within a reasonable time after that date.

### **L5.11 Does maternity leave count as service?**

All maternity leave counts towards eligibility for most forms of leave. It also counts for incremental progression. Only the paid portion of maternity leave counts towards the accrual of long service leave, unless the teacher has over 10 years service and takes less than six months maternity leave, in which case up to six months of the unpaid portion counts.

### **L5.12 Leave to attend pre-natal classes**

Generally, the Department expects teachers to attend

pre-natal classes outside school hours. If the only classes available are during school hours, FACS leave to credit may be granted to attend.

### **L5.13 Sick leave prior to maternity leave**

A teacher can take sick leave up to the anticipated date of birth.

### **L5.14 Transfer to a safe worksite**

If a teacher, because of pregnancy or breastfeeding, is in a workplace that constitutes a risk to her health or that of her unborn or newborn child, the employer has an obligation to either:

- adjust the teacher's working conditions and/or hours of work, or
- provide a safe alternate work site.

If the above conditions are not met, the teacher should contact the Federation for further assistance.

In some rare cases the teacher may be expected to take sick leave to credit, however this should not be the first course of action.

### **L5.15 Superannuation while on maternity leave**

If a contributor to the State Superannuation Scheme (phone 1300 130 096) or State Authorities Superannuation Scheme (phone 1300 130 095), a teacher has to pay her own contributions, that is the employee's contributions for the period of unpaid leave. This is the amount that is normally deducted from the teacher's fortnightly pay. The teacher should contact the State Superannuation Authorities Advisory Service for their fund to make arrangements for payments. The employer pays the employer's contributions while a teacher is on maternity leave.

Teachers who are members of schemes such as First State Super and only receive the Superannuation Guarantee do not have to make any arrangements regarding their superannuation while on unpaid maternity leave.

### **L5.16 Changing the date of return to duty**

Before a teacher begins maternity leave she can change the nominated date of return as many times as she wishes.

After proceeding on maternity leave a teacher can change the date once without the need to seek the approval of the Department, and any number of times after that as long as the Department agrees and as long as the date of return coincides with the beginning of a term.

In each case the teacher should give at least one month's notice of the change.

### **L5.17 Casual work while on maternity leave**

A teacher can do casual work while on unpaid maternity leave provided she obtains approval from the DET. The conditions include:



- a) Teachers who undertake casual teaching of less than four weeks continuous duration will receive the casual rate of pay loaded by five per cent.
- b) Where a teacher is employed for more than four weeks or as 0.2 for at least two terms they are deemed temporary and receive the same rate of pay as a permanent teacher on a pro rata basis.
- c) Such relief work accrues long service leave and counts towards incremental progression.

### **L5.18 NSW Teachers Federation fees, Teachers Federation Health and Credit Union payments on unpaid maternity leave**

Members can apply for an exemption from Federation fees for the period of unpaid leave. Applications must be in advance, in writing, enclosing a copy of the leave approval from the DET and should be sent to Federation's Membership section. If the member extends the period of leave without pay she must provide copies of leave approval documents for the extended period of leave. If fees are paid by salary deductions, deductions will cease and recommence with salary payments. However, unless the teacher applies in advance for an exemption, she will receive an account for the fees for the period of leave without pay and, until such time as that account is paid, will be considered unfinancial and will not receive benefits from her membership.

Teachers who have an approval to teach while on unpaid maternity leave must ensure they pay the appropriate Federation fees to maintain the full benefits of membership.

The teacher has to make her own arrangements with the Teachers Federation Health, phone 1300 728 188 or (02) 8346 2111, and the Teachers Credit Union, phone 131 221.

### **L5.19 Right of return**

A teacher is guaranteed right of return to her school if she returns by the beginning of the term after the anniversary of the date of birth of the child.

If the end of the 12 months falls during a school term, maternity leave may be extended to the end of the next school vacation and right of return to the school is retained.

During her absence the Department will fill her position with a temporary engagement. She may return at any time before this by providing the principal with one month's notice in writing of the earlier return date.

Under the Family Provisions Test Case (2005) she has a right to request an extension of the unpaid component for a further 12 month period. If such a request is granted by the employer, the teacher retains her right of return to her substantive position for a total of 24 months.

### **L5.20 Resignation following maternity leave**

A teacher can submit her resignation when she applies for maternity leave. In this case her position at the school or

workplace will be declared vacant. Her last day of service can be either the last day of paid maternity leave or the last day of approved leave. Federation advises members that it is not in their interest to submit their resignation at this time because all maternity leave counts as service.

A teacher can put in her resignation later if she wishes, and nominate her last day of service after her paid maternity leave expires and no later than the last day of her approved leave.

### **L5.21 Miscarriage, stillbirth and premature birth**

In the case of miscarriage the teacher will be granted sick leave or unpaid maternity leave for as long as the medical practitioner certifies to be necessary.

In the case of stillbirth the teacher has the option, subject to entitlements, to take either maternity or sick leave, paid or unpaid.

In the case of premature birth, where the teacher has not otherwise commenced maternity leave, this will commence no later than the date of giving birth.

### **L5.22 Long service leave and/or leave without pay immediately following maternity leave**

A teacher can take long service leave to credit and/or leave without pay. At present leave without pay is available for up to a total of three years in a teacher's career. It is available to teachers with at least two years service. Leave without pay may be taken following maternity leave to the extent of the teacher's entitlement. Please note that this would mean, in the case of permanent teachers, the teacher's loss of right of return to her substantive position. Whilst on leave without pay the teacher can undertake relief work on the pay and conditions outlined earlier in L5.17. Long service leave can also be used to top up maternity leave no pay at half or full pay.

### **L5.23 Maternity leave for subsequent pregnancies**

If a teacher falls pregnant while on maternity leave, a further period of maternity leave will be granted. There is no requirement for the teacher to return to work before proceeding on a subsequent period of maternity leave.

It is important to note that, for any subsequent period of maternity leave the teacher is entitled to the full period of maternity leave and payment of the full 14 weeks paid portion of the leave.

If a teacher has requested, and been granted, part-time leave until the child reaches school age, she is entitled to paid maternity leave for subsequent pregnancies at their substantive full-time equivalent.

If a teacher has proceeded onto full-time leave without pay following maternity leave, for subsequent pregnancies the teacher will receive paid maternity leave if the anticipated date of birth falls within the first 40 weeks



of leave. If the anticipated date of birth falls outside this period she will only receive unpaid maternity leave.

### **L5.24 Part time maternity leave**

a) Part time maternity leave is available to all full time teachers. Teachers have a right to take maternity leave on a part time basis. Any teacher who applies for part time maternity leave and meets obstruction or refusal is advised to consult the Federation immediately.

b) Teachers must apply seven weeks in advance of the date on which they wish to commence leave.

c) The period of part time maternity leave available depends on the amount of full time maternity leave already taken and the days the teacher wishes to work on a part-time basis. For example, if a teacher had taken six months full time maternity

leave, there is six months remaining. By teaching 2.5 days per week on a part time basis, she would use half her maternity leave each week and could continue on the part-time program for 12 months and extend to the end of the term at the expiration of the 12 months. Part time leave without pay may be applied for at the conclusion of the part-time maternity leave.

d) A minimum of one day's full time teaching must be worked each week on a set and regular basis.

e) Members are strongly advised to check with the State Superannuation Authorities Advisory Service for their fund regarding their contributions whilst on this leave. Contributors to the State Superannuation Scheme (old fund) are strongly advised to contact the State Super Advisory Service for their fund prior to applying for the leave. Telephone 1300 130 096.

## **Adoption leave**

### **L5.25 Entitlement**

Adoption leave is available to all permanent teachers and temporary teachers who are adopting a child.

A teacher who is adopting a child and who has completed 40 weeks of continuous full time service prior to the date of taking custody of the child will receive paid adoption leave. This service is defined as for maternity leave (see L5.1) and only needs to be completed once. A teacher with less than 40 weeks continuous service will receive unpaid adoption leave.

### **L 5.26 Application for adoption leave**

Application for adoption leave should be made at least one month before taking custody of the child. The application should include documentation from the adopting authority indicating the anticipated date of taking custody, and notice of the date of commencement of the leave and the nominated date of return.

### **L5.27 Length of leave**

A teacher may take leave to the beginning of the term after the anniversary of the date on which she/he took custody of the child, that is, 12 months plus the balance of the term. In addition, the teacher has the right to request an additional 12 months of leave, making 24 months in total.

Adoption leave starts from the date of taking custody of the child. Time prior to that date which is required for domestic and travel arrangements, including overseas travel and residential formalities in the country from which the child is adopted can be taken as family and community service leave, long service leave (extended leave) or leave without pay.

### **L5.28 Resumption of duty**

Before a teacher begins adoption leave she/he may change the date of return as many times as she/he wishes.

After proceeding on adoption leave the teacher may

change the date once without the approval of the Director-General or any number of times with the approval of the Department.

### **L5.29 Paid adoption leave**

If a teacher has completed the 40 weeks continuous service she/he is entitled to 14 weeks on full pay from the date of taking custody of the child. This can be taken at half pay, full pay or as a lump sum.

### **L5.30 Adoption leave counting as service**

The whole of adoption leave counts towards eligibility for most forms of leave. It also counts for incremental progression.

Only the paid portion of adoption leave counts towards the accrual of long service leave, unless the teacher has over 10 years service and takes less than six months adoption leave in which case up to six months of the unpaid portion counts.

### **L5.31 Vacation pay while on adoption leave**

The teacher will be paid for the holidays while on adoption leave in proportion to the number of days she/he has been on duty or on paid leave during the year. 14 weeks on full pay will also accrue some vacation pay. For a period of paid adoption leave coinciding with school holidays, the teacher will be paid vacation full pay. Unpaid adoption leave does not accrue vacation pay.

### **L5.32 Annual leave loading**

This will be paid in proportion to the number of days the teacher has been on duty or on paid leave during the year. It should be paid within a reasonable time after November 30.

### **L5.33 Superannuation while on adoption leave**

The teacher has to pay her/his own contributions for unpaid



periods of leave, but not the employer's contributions in the State Superannuation Scheme (phone 1300 130 096). The teacher should check with the State Superannuation Authorities Advisory Service for SASS (phone 1300 130 095) and First State Super (phone 1300 650 873).

### **L5.34 Adoption leave on a part-time basis**

The guidelines for part time adoption leave are similar to those for part time maternity leave. The maximum period for part time adoption leave is two years from the date of taking custody of the child extended to the end of the term in which the date of expiration of two years occurs.

## **Parental leave**

### **L5.35 Entitlement**

Unpaid parental leave is available to permanent and temporary teachers for whom maternity or adoption leave does not apply.

For casual teachers, unpaid parental leave of one week may be granted at the actual date of birth and applies to those teachers who have employment at the time of taking leave.

Paid parental leave is available to permanent and temporary teachers who have completed 40 weeks continuous service. The 40 weeks continuous service only needs to be completed once.

### **L5.36 Simultaneous leave**

Teachers may take simultaneous parental leave when their partner is on maternity or adoption leave when:

- i) the teacher is on paid parental leave;
- ii) both partners are sharing child caring duties on a part time basis on separate days.

In addition a teacher has a right to request an extension of full time, simultaneous parental leave up to a maximum of eight weeks.

### **L5.37 Applications for parental leave**

Teachers are required to make application for parental leave at least one month prior to the proposed first day of leave. The application must include documentation as to the anticipated date of birth or the expected date of taking custody of a child.

### **L5.38 Length of parental leave**

A teacher is entitled to a period of parental leave of 12 months, including the paid component where eligible. A teacher also has the right to request an extension of parental leave up to a total of 24 months. If such an extension is granted, the teacher retains right of return to her/his substantive position.

If the end of the 24 months falls during the school term, parental leave may be extended to the end of the next school vacation.

### **L5.39 Paid parental leave**

When a teacher has completed 40 weeks of continuous service she/he is entitled to one week paid parental leave.

This can be taken on full or half pay.

### **L5.40 Right of return**

A teacher retains right of return to her/his substantive position for a period of up to 24 months once the DET has approved such leave.

The right of return can also be extended to the end of the next school vacation if the end of the period of leave falls within a school term. This leave must be taken as a block.

### **L5.41 Casual work while on parental leave**

The same conditions apply as for maternity leave (See L5.17).

### **L5.42 Part time parental leave**

The same conditions apply as for part time maternity leave (See L5.24).

This leaflet sets out in summary, current service conditions, information and advice regarding relevant Department of Education and Training (DET) policy documents and other legislative requirements. It is not intended to be exhaustive as changes occur from time to time.

Members should also refer to the relevant DET documents.

Members who are given conflicting advice, or who are uncertain about their entitlements can contact Federation on (02) 9217 2100 or 1300 654 369 or the Federation website ([www.nswtf.org.au](http://www.nswtf.org.au)).

Authorised by John Irving, General Secretary, NSW Teachers Federation, 23-33 Mary Street, Surry Hills NSW 2010. 1002015

May 2010

# DETERMINATION UNDER THE TEACHING SERVICE ACT 1980

## DETERMINATION NO. 1 OF 2007

### MATERNITY LEAVE

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I, Michael Coutts-Trotter, Director-General of Education and Training make the following determination pursuant to section 13 of the *Teaching Service Act 1980*.

#### 1. Application

- 1.1 This determination rescinds and replaces Determination Number No. 2 of 2006 Maternity Leave.
- 1.2 This determination will apply to permanent and temporary school teachers and related employees.
- 1.3 This determination does not apply to casual teachers or teachers employed at Bradfield College or the Saturday School of Community Languages.
- 1.4 The provisions of this determination will apply where the anticipated date of birth was on or after 1 January 2006.
- 1.5 Definitions

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

"Birth" for the purpose of this determination shall include stillbirth except where otherwise stated.

"Director-General" means the Director-General of the Department of Education and Training.

"Department" means the Department of Education and Training.

"Continuous service" includes:

- all periods of paid leave, previous adoption, parental and maternity leave without pay, sick leave without pay, school vacations, public holidays and up to a total of five days leave without pay;
- all periods of maternity leave taken not more than 9 weeks prior to the anticipated date of birth;
- full time and part time temporary service and full time casual service; and,



- previous service with TAFE or another government department which merges with employment as a teacher.

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

- paid school vacations;
- unpaid school vacations that occur during a temporary engagement;
- unpaid school vacations that occur between engagements where there are temporary engagements abutting the beginning and end of the vacation;
- the four week period prior to the anticipated date of birth regardless of whether a temporary engagement exists during this period or not.

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

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

"Related employees" means education officers, senior education officers and principal education officers.

"Teacher" means permanent and temporary school teachers and related employees.

## **2. Maternity Leave**

### **2.1 Entitlement**

- 2.1.1 All teachers who become pregnant are entitled to unpaid maternity leave irrespective of their length of service (refer to 2.4 for paid leave where appropriate).
- 2.1.2 A teacher who is pregnant shall, subject to this determination, be entitled to be granted maternity leave as follows:
- a) for a period up to nine weeks prior to the anticipated date of birth; and
  - b) for a further period of up to 12 months after the actual date of birth.
- 2.1.3 A teacher may be granted unpaid maternity leave earlier than 9 weeks prior to the anticipated date of birth, however this will not extend the total amount of maternity leave available.

- 2.1.4 A teacher who becomes pregnant while on maternity leave can access further paid maternity leave without having to return to duty even if the anticipated date of birth is outside the maternity leave.
- 2.1.5 A teacher may take maternity leave as follows:
- a) as a period of leave on a full time basis totalling 12 months from the actual date of birth; or
  - b) as a period of unpaid leave on a part time basis up to 24 months (equivalent of 12 months full time leave from the actual date of birth) at the discretion of the Director-General; or
  - c) as a combination of full time and part time leave provided that the total period of maternity leave taken does not exceed the equivalent of 12 months full time leave from the actual date of birth.
- 2.1.6 Accrued extended leave may be taken concurrently with unpaid or half pay maternity leave. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with unpaid or half pay maternity leave.
- 2.1.7 The period of 12 months in respect of full time maternity leave or 24 months in respect of part time maternity leave may be extended to the end of the school vacation which next occurs after the maternity leave expires. This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.
- 2.1.8 Should a teacher not wish to return to duty on the expiration of the maximum period of maternity leave, the teacher may access additional maternity leave under right to request as per 2.2. Thereafter, leave without pay for personal reasons, or other leave to credit may be granted.
- 2.1.9 A further period of maternity leave may be granted if pregnancy occurs while on maternity leave. Any residual leave relevant to the initial period of maternity leave will be cancelled and maternity leave appropriate to the anticipated date of birth applies in respect of the subsequent pregnancy.

## **2.2 Right to Request**

- 2.2.1 A teacher entitled to maternity leave may request the Department to allow the teacher:
- a) to extend the period of simultaneous maternity leave use up to a maximum of eight weeks<sup>1</sup>;

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<sup>1</sup> To be read in conjunction with Determination No.2 of 2007 Parental Leave

- b) to extend the period of unpaid maternity leave for a further continuous period of leave not exceeding 12 months;
- c) to return from a period of maternity leave on a part-time basis until the child reaches school age;

to assist the teacher in reconciling work and parental responsibilities.

- 2.2.2 The Department shall consider the request having regard to the teacher's circumstances and, provided the request is genuinely based on the teacher's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Department's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- 2.2.3 The teacher's request and the Department's decision made under 2.2.1 b) and 2.2.1 c) must be recorded in writing.
- 2.2.4 Where a teacher wishes to make a request under 2.2.1 c), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the teacher is due to return to work from maternity leave.

### **2.3 Communication During Maternity Leave**

- 2.3.1 Where a teacher is on maternity leave and a definite decision has been made to introduce significant change at the workplace, the Department shall take reasonable steps to:
  - a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing maternity leave; and
  - b) provide an opportunity for the teacher to discuss any significant effect the change will have on the status or responsibility level of the position the teacher held before commencing maternity leave.
- 2.3.2 The teacher shall take reasonable steps to inform the Department about any significant matter that will affect the teacher's decision regarding the duration of maternity leave to be taken, whether the teacher intends to return to work and whether the teacher intends to request to return to work on a part-time basis.
- 2.3.3 The teacher shall also notify the Department of changes of address or other contact details which might affect the Department's capacity to comply with 2.3.1.

## 2.4 Paid Maternity Leave

- 2.4.1 Payment for maternity leave is available to permanent teachers subject to completion of 40 weeks continuous service following employment or re-employment prior to the anticipated date of birth. Maternity leave for permanent teachers taken not more than 9 weeks prior to the anticipated date of birth will count towards the 40 weeks continuous service.
- 2.4.2 Payment for maternity leave is available to temporary teachers subject to completion of 40 weeks. The 40 weeks continuous service must be completed within the two year period immediately preceding the anticipated date of birth. Maternity leave for temporary teachers taken not more than 9 weeks prior to the anticipated date of birth will count towards the 40 weeks continuous service.
- 2.4.3 Paid maternity leave is available to temporary teachers only when the anticipated date of birth falls within a period of temporary engagement. If the temporary engagement ceases during paid maternity leave, the remaining portion of the paid maternity leave will be paid as a gratuity. The maternity leave gratuity will be reduced by the amount of any vacation leave due over the maternity leave period.
- 2.4.4 Payment is made for a period not exceeding 14 weeks full time equivalent.
- 2.4.5 Where the paid maternity leave period includes a school vacation, the teacher is paid accrued vacation entitlement or maternity leave, whichever amount is higher.
- 2.4.6 The school vacation does not extend the available period of paid maternity leave.
- 2.4.7 During the period of 24 months from the date of birth of a child, a pregnant teacher can access further paid maternity leave at their substantive full time equivalent immediately prior to taking leave regardless of whether they are currently on full time or part time leave.

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

- 2.4.8 Where a teacher has taken 24 months of maternity leave, then proceeds on full time leave without pay, for a subsequent pregnancy during this period of leave without pay following the 24 months of maternity leave:
- if the anticipated date of birth of the child falls in the period up to and including 40 weeks, following the conclusion of the initial maternity leave the subsequent maternity leave is paid at the teacher's substantive full time equivalent immediately prior to taking leave;
  - if the anticipated date of birth of the child falls outside 40 weeks following the conclusion of the initial maternity leave the subsequent

maternity leave will be unpaid.

2.4.9 Where a teacher has taken maternity leave, then accesses their right to request a return to work on a part time basis (until the child reaches school age), for any subsequent maternity leave:

- the teacher is always paid at the substantive FULL TIME EQUIVALENT which applied immediately prior to taking leave regardless of the duration of the part time leave.

2.4.10 With the exception of higher duties allowance and locality allowances, all allowances will be paid to eligible teachers and related employees for the period of paid maternity leave. No allowances will be paid to teachers and related employees during periods of no pay maternity leave.

## **2.5 Method of Payment**

2.5.1 When completing an application for maternity leave a teacher may elect to be paid by normal fortnightly payments at full or half pay or by lump sum payment.

2.5.2 A teacher may apply for one combination of leave at full and half pay or vice versa.

## **2.6 Application and Variation of Leave**

2.6.1 An application for maternity leave, accompanied by a medical certificate stating the anticipated date of birth should be submitted at least one month prior to the proposed first day of leave.

2.6.2 Maternity leave must commence no later than the anticipated date of birth.

2.6.3 An application for maternity leave should specify the number of weeks required at full pay and at half pay where appropriate.

2.6.4 The first and last date of leave must be stated on the application.

2.6.5 A teacher may vary the intended period of leave any number of times before it commences.

2.6.6 After leave commences, the period of leave may be varied once without approval and on any number of occasions with approval. However, resumption of duty must then coincide with the commencement of a school term.

2.6.7 Subject to approval, a teacher who has returned to full time duty after maternity leave, may, provided the teacher has a balance of maternity leave to credit, apply to revert to full time or part time maternity leave.

## **2.7 Notification of Birth**

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

## **2.8 Miscarriage or Stillbirth**

### **2.8.1 Miscarriage**

In respect of a miscarriage, a teacher shall be granted sick leave or unpaid maternity leave for as long as a medical practitioner certifies to be necessary.

### **2.8.2 Stillbirth**

In respect of a stillbirth, subject to an entitlement existing, a teacher shall have the option of taking paid or unpaid sick leave or maternity leave (including paid maternity leave where due).

### **2.8.3 Premature birth**

In respect of a premature birth, where the teacher has not otherwise commenced maternity leave, maternity leave will commence no later than the actual date of giving birth.

## **2.9 Transfer to a Safe Job and Sick Leave**

2.9.1 A teacher may use available sick leave with pay, sick leave without pay, extended leave or family and community service leave as appropriate, if, because of a complication associated with the pregnancy, including a history of miscarriage or other illnesses the teacher is unable to continue to work. In this instance leave granted must cease no later than the day prior to the anticipated date of birth.

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

- a) the teacher's working conditions or hours of work are to be temporarily adjusted to avoid exposure to the risk; or
- b) where the above adjustment is not possible or cannot reasonably be made, the teacher is to be temporarily transferred to other appropriate work that will avoid exposure to the risk and is, as nearly as possible, comparable in status and pay to that of her present work; or

- c) where the above transfer is not possible or cannot reasonably be made, the teacher is to be granted:
- unpaid maternity leave for as long as a medical practitioner certifies to be necessary to avoid exposure to the risk. This applies regardless of whether the teacher has exhausted her unpaid maternity leave entitlement under paragraph 2.1.2; and the provisions of 2.1.3 will not apply in respect of unpaid maternity leave granted under this provision; or
  - paid sick leave as the teacher is entitled to, and for as long as a medical practitioner certifies to be necessary to avoid exposure to the risk.

## **2.10 Absent on Other Leave**

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

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

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

## **2.11 Casual Teaching While on Maternity Leave**

2.11.1 A teacher on unpaid maternity leave (including part time maternity leave without pay) or leave without pay following maternity leave may seek approval to work as a casual teacher while on such leave. No approval will be granted for a teacher to undertake casual teaching whilst on paid maternity leave.

2.11.2 A teacher undertaking casual teaching duties will receive a daily rate as follows:

a) Non Promotions Positions

Teachers who undertake casual teaching whilst on unpaid maternity leave, will be paid on a daily basis at a rate of pay determined by dividing their annual incremental salary by 203.

b) Promotions Positions

Teachers in promotions positions who undertake casual teaching whilst on unpaid maternity leave, will be paid on a daily basis at a rate of pay determined by dividing the annual salary of a teacher on step 13 by 203.

- 2.11.3 A teacher will be eligible to use cumulative sick leave from her previous permanent employment if she is unable, because of illness, to work as a casual teacher on a day on which she is engaged.
- 2.11.4 Service as a casual teacher during leave without pay following maternity leave will count as service for incremental progression.
- 2.11.5 Service as a casual teacher will count as service for long service leave purposes except where the period of leave during which service is undertaken is itself creditable as service.
- 2.11.6 A teacher will be paid an annual leave loading entitlement for casual service on a pro rata basis.

## 2.12 Right of Return

- 2.12.1 A permanent teacher's right of return to her substantive position is retained if she resumes duty 24 months (or earlier) after the actual date of birth of the child.
- 2.12.2 A teacher with right of return under 2.12.1 who becomes pregnant while on maternity leave may access a new period of maternity leave (for a subsequent pregnancy) and the right of return period will start again without the need for the teacher to return to work.
- 2.12.3 A temporary teacher's right of return to her position is retained for the duration of any maternity leave granted during a period(s) of a temporary engagement.
- 2.12.4 Where the end of 24 months falls during a school term, maternity leave and any subsequent leave may be extended to the end of the next school vacation and right of return to the substantive position is retained. This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.



### **2.13 Resumption of Duty**

Except in the case of 2.2.1 c) where a minimum of seven weeks notice is required, a teacher must, no less than one month prior to the date on which the teacher is due to resume duty confirm in writing that she will be resuming duty, or where appropriate apply for an extension of leave, or submit a notice of resignation.

### **2.14 Resignation**

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

### **2.15 Superannuation**

A teacher on maternity leave whether paid or unpaid, is not required to meet any payment of the employer's superannuation contributions to any NSW government superannuation fund.

### **2.16 Service Credits for Maternity Leave**

- 2.16.1 All periods of full time and part time maternity leave count as service for incremental purposes.
- 2.16.2 Maternity leave does not count as service for the award of a Teacher's Certificate nor as part of the probationary period for confirmation of a teacher's permanent appointment.
- 2.16.3 Maternity leave without pay does not count as service for extended leave, except when a teacher has completed at least ten years paid service, then any period of maternity leave without pay of less than six months counts for the accrual of extended leave.
- 2.16.4 Paid maternity leave counts as service for annual leave loading purposes.
- 2.16.5 Paid maternity leave accrues vacation pay and any entitlement will be paid during the relevant vacation.
- 2.16.6 With the exception of extended leave, annual leave loading and vacation leave, paid and unpaid maternity leave counts as service in respect of all other categories of leave.
- 2.16.7 These service credits apply equally to maternity leave and any additional maternity leave approved under right to request provisions.

## 2.17 Part Time Maternity Leave

### 2.17.1 Eligibility

All teachers who give birth to a child may take maternity leave on a part time basis.

### 2.17.2 Application and Variation of Leave

- a) An application for part time maternity leave should be submitted at least seven weeks in advance of the date on which leave is to commence.
- b) Applications for part time maternity leave for between one and four days per week may be approved over a period of up to two years subject to the leave not exceeding the maximum entitlement provided in 2.1.5.
- c) A teacher may make application to vary the period of part time maternity leave and/or work arrangements provided that sufficient maternity leave is available.
- d) Subject to approval, a teacher who has returned to full time or substantive hours of duty after maternity leave may apply to revert to part time or full time maternity leave.
- e) Similarly, a teacher who has returned to duty on a part time basis may apply to revert to full time maternity leave and vice-versa.
- f) Where the maximum entitlement provided in 2.1.5 has been exhausted, a teacher may make application for additional maternity leave on a full time or part time basis in accordance with 2.2 Right to Request.

### 2.17.3 Duration of Leave

- a) The maximum period of part time maternity leave which may be initially be taken is up to 24 months (equivalent of 12 months full time leave from the actual date of birth). If this date falls during a term, leave may be extended to the end of the vacation which next occurs after the child's second birthday. A teacher may also request further part-time maternity leave as per 2.2.1 c). This provision does not apply to related employees working administrative hours, except when a related employee is returning to a school based position.

- b) Subject to the maximum period stated in a) above, the actual period of part time maternity leave that a teacher may take will be determined by:
  - i) the period of untaken full time maternity leave; and
  - ii) the number of days per week that the teacher works.
- c) A teacher may also request further part-time leave as per 2.2.1 c).

#### 2.17.4 Right of Return

A teacher on part time maternity leave without pay will have right of return to her substantive position for the duration of the period of leave.

#### 2.17.5 Salary and Incremental Progression

- a) The salary for teachers on part time maternity leave is calculated in accordance with the following formula:

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

- b) Allowances which are paid in recognition of duties undertaken during the part time leave arrangements are calculated in a similar manner.
- c) Teachers eligible to be paid a locality or climatic allowance shall be paid on a pro rata basis to a full time teachers' entitlement, calculated on the number of days actually worked.

#### 2.17.6 Leave Conditions

- a) Vacation Leave and Annual Leave Loading

Teachers on part time maternity leave accrue vacation leave and are eligible for annual leave loading on a pro rata basis.

Where a teacher's hours of work (full time equivalent) changes during the school year, vacations are taken and paid at the full time equivalent which applies immediately prior to the vacation period.

- b) Leave Without Pay

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

- c) Accrued extended leave may be taken concurrently with part time maternity leave, provided the period of leave does not exceed the equivalent of 12 months full time. Related employees working administrative hours may take both accrued extended leave and accrued recreation leave concurrently with part time maternity leave.
- d) Teachers on part time maternity leave may be granted the following leave under normal conditions:
- Leave without pay
  - Extended leave
  - Sick leave
  - Vacation leave
  - Special leave
  - Family and community service leave

The following leave will accrue on a pro-rata basis

- Family and community service leave
- Sick leave
- Extended Leave
- Vacation leave
- Special leave


#### 2.17.7 Other Employment

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

### 3. Date of Effect

This determination shall be effective from 1 January 2006 and remain in operation until varied or repealed.

Signed:

  
\_\_\_\_\_  
Director-General of Education and Training

Date:

27/11/07.