

State Service Act 2000



Ministerial Direction No. 3: 2003

Title: TEACHING SERVICE (TASMANIAN PUBLIC SECTOR) AWARD 2000

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Purpose (Intent/Outcome)

This Direction specifies entitlements and administrative procedures in relation to:

- Calculation of salary
- Resignation of employees
- Leave
- Travelling scholarships

for persons covered by the *Teaching Service (Tasmanian Public Sector) Award 2000*.

Legislative Basis and Related Documents

- *State Service Act 2000* Section 14
- *Teaching Service (Tasmanian Public Sector) Award 2000*.

Directive

Pursuant to Section 14 of the *State Service Act 2000* I hereby direct that the following administrative arrangements with regard to persons covered by the *Teaching Service (Tasmanian Public Sector) Award 2000* shall have effect:

1 Interpretation

“Department” means the Department of Education;

“School” means a worksite established by the Department for the purposes of providing instruction or support of instruction;

“State school” means a kindergarten, an infant school, a primary school, a district school, a district high school, a high school, a secondary college or centre, a special school, an environment centre, a marine study centre or a teachers' centre;

“Teaching staff” means an employee holding one or more of the following qualifications:

- 5-year trained;
- 4-year trained;
- 3-year trained;
- 2-year trained; or
- uncertificated;

for the purpose of teaching students in Kindergarten to Grade 12. The duties are predominantly those of an instructional nature, normally classroom-based.

2 Calculation of fortnightly and hourly salary

- (1) An employee’s fortnightly salary is to be calculated by the following formula:

$$\frac{\text{Annual Salary}}{1} \times \frac{10}{\text{Total Number of Working Days}} = \text{Fortnightly Salary}$$

where the total number of working days represents the number of calendar days, exclusive of Saturdays and Sundays, within the financial year commencing 1 July each year (ie 260, 261 or 262).

- (2) An employee’s hourly salary is to be calculated by dividing the fortnightly salary contained in paragraph (1) by the number of ordinary working hours per fortnight.

3 Resignation of employees

- (1) An employee who desires to resign from the Department shall give notice of that desire, in writing, not less than one month before the date on which that employee desires the resignation to take effect.
- (2) A resignation by a teaching staff employee shall take effect from the completion of the last school day of the first, second or third term except where the relevant Head of Agency, in circumstances the relevant Head of Agency considers exceptional, otherwise determines.

4 Leave

4.1 *Recreation leave for teaching staff*

- (1) The annual recreation leave for teaching staff in every State school is:
 - (a) in the case of:
 - (i) teachers in a secondary college, leave commencing at the end of the third term in every year and ending on the Friday before the second Monday in the month of February in the following year; or
 - (ii) teachers in any other kind of State school, leave commencing at the end of the third term in every year and ending on the Friday before the third Monday in the month of February in the following year; and
 - (iii) two weeks' leave immediately following the last Friday in the month of May in every year; and
 - (iv) two weeks' leave immediately following the last Friday in the month of August in every year.
- (2) Annual recreation leave under paragraph (1) (a) shall commence one day earlier for the teachers of a State school, other than a secondary college, in a part of the State approved by the relevant Head of Agency pursuant to regulation 13 (4) of the Education Regulations 1971.
- (3) The paid recreation leave in any leave year for a teacher who has been granted maternity leave or leave without pay, other than for sick leave, for one or more periods in that leave year shall be calculated in accordance with the following formula:

$$R = B \times \frac{12}{40}$$

where -

“R” means the number of weeks of paid recreation leave due to the teacher; and

“B” means the number of weeks of school terms in the leave year less the aggregate number of weeks of that leave without pay granted.

- (4) For the purposes of the formula specified in paragraph (3) and subject to paragraph (5), where the aggregate number of working days of leave without pay granted in a leave year is less than 20 working days, the first five working days of that leave without pay shall not be taken into account when calculating “B”.
- (5) For the purposes of the formula specified in paragraph (3), where the aggregate number of working days of leave without pay granted in a leave year is less than 20 working days, but some of that leave without pay is part of a continuous period of leave without pay of not less than 20 working days and that continuous period spans two or more leave years, all working days of leave without pay in each leave year spanned by that continuous period shall be taken into account when calculating “B”.
 - (a) For the purposes of paragraphs (3), (4) and (5), “week” means the five working days from Monday to Friday (inclusive) and each working day is 0.2 of a week.

- (6) When required to meet the needs of the Department in special circumstances, the relevant Head of Agency may make arrangements, in individual cases, for recreation leave to be taken by a teacher at times other than the times specified in paragraphs (1) and (2).

4.2 Recreation leave for employees other than teachers.

- (1) Subject to 4.2(4), recreation leave for an employee, other than a teacher, shall be credited to that employee at the end of each leave year.
- (2) Except as otherwise provided in this Direction and subject to the convenience of the Department, recreation leave shall be granted to every employee, other than a teacher, for the prescribed period in every leave year.
- (3) For the purposes of subregulation (2), “prescribed period”, in relation to the recreation leave in each leave year, means a period of 20 working days, inclusive of any days, not being bank holidays, on which State public offices are closed during the period commencing on Christmas Day and ending on the day after New Year's Day (inclusive).
- (4) A person who was an employee on the day before this regulation took effect shall, while continuing to occupy the office held on that day, be credited with recreation leave in advance at the beginning of each leave year.
- (5) An employee who has received recreation leave as a teacher in the 12 months immediately preceding commencement as an employee other than as a teacher is not entitled to recreation leave as provided in 4.2(3) for the first leave year as an employee other than as a teacher but may be granted such period of recreation leave as the relevant Head of an Agency specifies.
- (6) An employee, other than a teacher, does not accrue recreation leave during any period of absence of, or exceeding, 90 days in the aggregate in any leave year except when that employee is on leave granted in pursuance of the *Long Service Leave (State Employees) Act 1994*, recreation leave, leave taken as a result of disease or injury arising out of, and in the course of, the employment of that employee or leave granted in case of sickness.

4.3 Payment in lieu of recreation leave

- (1) Subject to paragraph (5), where the employment of an employee is terminated by resignation, retirement, dismissal, death or otherwise, and that employee's period of service at that time exceeds 20 consecutive working days, there shall be paid to the employee or, in the case of death, to that employee's legal personal representative or, if the relevant Head of Agency so directs, to that employee's spouse or to any person who the relevant Head of Agency is satisfied was dependent upon that employee at the time of death, an allowance in lieu of recreation leave calculated in accordance with the following formula:

- (a) for a teacher:

$$A = (B \times \frac{12}{40} C) \times \frac{S}{52};$$

- (b) for an employee other than a teacher, who is credited with recreation leave in advance:

$$A = (D - R) \times \frac{S}{260};$$

(c) for any other employee:

$$A = D + P \times \frac{S}{260}.$$

Note

260 represents the total number of working days in the financial year, that is actual number of days in the year exclusive of Saturdays and Sundays. This may vary depending on the actual number of working days in the year and could be 260, 261 or 262.

where:

“A” means the allowance payable to that employee;

“B” means the number of weeks of school terms in the period from the last anniversary of the commencement of work by that teacher regardless of the leave year that teacher observes or, where that teacher has not completed 12 months work, from the day that teacher commenced work to the day of termination of work;

“C” means the number of weeks recreation leave taken in the period referred to in “B”;

“D” means the number of days recreation leave shown as due to that employee on the leave record kept pursuant to *Ministerial Direction 2 -2001; Work Arrangments and Leave*;

“P” means the number of days leave earned for the period commencing on the beginning of that employee's leave year to the day of termination of work calculated on the basis of one day for every 18 days of that period to nearest whole number;

“R” means the number of days leave unearned for the period commencing on the day of termination of work to the end of the leave year of that employee calculated on the basis of one day for every 18 days of that period to the nearest whole number; and

“S” means the annual salary of that employee together with the annual rate of allowances (if any) payable at the time of termination of work.

- (2) For the purposes of paragraph (1):
 - (a) “week” means the five working days from Monday to Friday (inclusive) and each day shall be counted as one-fifth of a week; and
 - (b) a teacher who receives retrospective salary to 1st January in the year that teacher commenced work under regulation 6 (3) of the *State Service Regulations 2001* shall be deemed to have commenced work on that day.
- (3) If the application of the formula specified in paragraph (1) in relation to the termination of work of an employee, other than the termination of work due to death or retirement on account of sickness or pursuant to section 50 or 52 of the Act, results in a negative figure for “A”, that amount shall be deducted from any salary payable to that employee or that employee shall refund that amount.
- (4) Notwithstanding paragraph (1), no allowance shall be paid under this clause to an employee who:

- (a) resigns from the Department and fails to give the relevant Head of Agency one month's notice, in writing, of that employee's intention to so resign, unless the relevant Head of Agency accepts a lesser period of notice; or
 - (b) is dismissed from the State Service for being absent from duty without leave.
- (5) A teacher who:
- (a) was an employee on 1st January 1987 and is continuously employed until retirement on or before 31st December 1990; or
 - (b) resigned before 1st January 1987 -
- shall be entitled, if so electing, to retire or resign under the conditions in force immediately before 1st January 1987.

4.4 Sick leave

- (1) An employee is entitled to accumulative paid sick leave on the following basis: 20 working days for the first year of service and ten working days for each subsequent year of service. Sick leave shall be credited to an employee at the beginning of each leave year.
- (2) The employer may, at any time before or after an employee has exhausted the sick leave to which s/he is entitled, grant to that employee a further entitlement of paid sick leave which shall not exceed 20 working days.
- (3) Leave of absence for sick leave shall only be approved for periods of three days or longer, if the application for leave is accompanied by a certificate from a legally qualified medical practitioner which certifies that the leave was necessary. Provided that if an employee has had at least five days absence due to sick leave, in any one leave year, without a certificate from a legally qualified practitioner, all subsequent applications for sick leave within that leave year, must be accompanied by such a certificate.
- (4) The employer may grant to an employee leave of absence for sick leave without pay for such periods, not exceeding one year in the aggregate, as the employer thinks necessary.

4.5 Communicable diseases leave

- (1) Where a teacher has contracted a specified communicable disease, the teacher shall absent himself or herself from duty for such period as the relevant Head of an Agency may determine pursuant to subclause (2).
- (2) The relevant Head of an Agency may, after consultation with the relevant Head of an Agency of Health Services, by notice in writing:
 - (a) specifying a communicable disease for the purposes of subclause (1); and
 - (b) determine the period for which a teacher who has contracted such a disease is required to absent himself or herself from duty.
- (3) A teacher who is required under subclause (1) to absent himself or herself from duty shall, on the production of a certificate of a legally-qualified medical practitioner certifying that the teacher has contracted a specified communicable disease, be granted leave of absence on full-pay for the period for which the teacher is so required to be absent from duty.

- (4) For the purposes of this regulation, “specified communicable disease” means a communicable disease specified by the relevant Head of an Agency pursuant to subclause (2).

4.6 Carer’s leave

An employee shall be entitled to five days of paid leave per annum to care for an ill person who is a member of her/his family or household. Such leave shall be deducted from her/his sick leave entitlements.

4.7 Maternity leave

- (1) An employee who has (whether after becoming an employee or not) become pregnant:
 - (a) is entitled, upon giving at least one month's notice, to leave of absence for the period for which she makes application in accordance with this clause, being a period of leave that complies with the requirements of paragraph (2); and
 - (b) shall, whether or not she has been granted leave of absence, absent herself from duty during the period commencing six weeks before the expected date of her confinement and ending at the expiration of six weeks from the day on which her pregnancy terminates.
- (2) The period of leave referred to in paragraph (1) (a) is a period of leave that does not exceed 52 weeks in length and that:
 - (a) commences not earlier than 20 weeks, or later than six weeks, before the relevant date; and
 - (b) ends not earlier than six weeks, or later than 46 weeks, after the relevant date.
- (3) For the purposes of paragraph (2), “the relevant date” means:
 - (a) in relation to an application made for the purpose of paragraph (1) by an employee while she is pregnant or to an amendment to such an application so made, the expected date of her confinement; and
 - (b) in any other case, the day of the termination of her pregnancy.
- (4) Notwithstanding the provisions of paragraphs (1) and (2), the relevant Head of Agency may, in circumstances which the relevant Head of Agency considers to be exceptional, substitute such shorter periods of leave under this clause as the relevant Head of Agency may determine in any individual case.
- (5) Subject to paragraph (6), on application being made to the relevant Head of Agency by an employee, the relevant Head of Agency shall grant to her the leave of absence to which she is entitled under paragraph (1).
- (6) An application by an employee under paragraph (5) shall be accompanied by the certificate of a legally-qualified medical practitioner indicating the expected date of that employee's confinement.
- (7) At any time during which an employee is absent from duty in pursuance of leave of absence granted under, or pursuant to the requirements of, paragraph (1), she may amend an application made under paragraph (5) so as to extend or reduce

the period referred to in the application, but so that the altered period complies with the requirements of paragraph (2), and the relevant Head of Agency shall, in accordance with the amended application, vary the grant of leave of absence to that employee.

- (8) Where an employee is granted leave of absence under this clause for any period, she may notify the relevant Head of Agency that she desires that period, or any specified part of that period, to be treated as a period for which she has been granted leave of absence on the grounds of sickness, and that period or that part of that period, as the case may be, shall be so treated except to the extent that it exceeds in length the period for which she could, under this direction, be granted leave of absence on the ground of sickness.
- (9) A reference in paragraph (8) to sickness shall be deemed not to include references to sickness arising out of or in the course of the employment of an employee or arising from her default or misconduct.
- (10) An employee is not entitled to pay in respect of any period of leave of absence granted to her under this clause or in respect of any period during which she is required under this clause to absent herself from duty, except in so far as that period is, or is to be treated as, a period of absence with leave in respect of which she is entitled to pay, or any proportion of her pay, pursuant to any other clause.
- (11) Subject to paragraphs (8) and (13), nothing in this clause prevents the grant of leave of absence to an employee under any other provision of this direction, or prejudices or affects her rights in respect of the granting of any such leave of absence.
- (12) An employee who has been on leave of absence granted under this clause:
 - (a) shall give the relevant Head of Agency one month's notice in writing of her intention to resume duty, unless the relevant Head of Agency in circumstances the relevant Head of Agency considers to be exceptional, accepts a shorter period of notice; and
 - (b) shall not resume duty until she has been instructed to do so by the relevant Head of Agency.
- (13) Unpaid leave of absence granted under this clause shall be treated as leave without pay granted under regulation 25 of the *State Service Regulations 2001* for the purposes of clause 4.1 and regulation 25.
- (14) Notwithstanding this clause, a teacher who before 1st January 1987 was pregnant or had commenced a period of leave under this clause shall be entitled, if so electing, to apply for or continue leave and resume duty under the conditions in force immediately before that day.

4.8 Adoption leave

- (1) The relevant Head of Agency may grant to an employee a paid leave of absence for the purpose of adopting a child (in this clause referred to as “adoption leave”) provided the following requirements are met:
 - (a) the employee must have had 12 months continuous employment under the *State Service Act 2000* at the time of commencing adoption leave and be eligible for paid sick leave;

- (b) the child to be adopted must be under 5 years of age;
 - (c) the child cannot be a child of a spouse or relative;
 - (d) the child cannot have previously resided with the employee; and
 - (e) evidence of the adoption must be provided with a statutory declaration from the employee verifying that they will be the primary carer. The employee must also supply the particulars of adoption leave taken, or to be taken, by the employee's partner in relation to the child.
- (2) Adoption leave with pay may be granted for a period not exceeding 6 weeks.
 - (3) The employee may be entitled to 2 days leave without pay prior to taking custody for the purpose of interviews and relocation of the child.
 - (4) The relevant Head of Agency may grant adoption leave with pay in cases where a child is over 5 years of age and special circumstances exist.
 - (5) An employee taking adoption leave with pay is also entitled to a period of adoption leave without pay, providing the total leave taken does not exceed 52 weeks. The paid component of adoption leave may be taken any time within this 52-week period.
 - (6) An employee may vary the period of adoption leave for which s/he has been granted leave of absence provided that:
 - (a) at least one month's notice has been given to the employer; and
 - (b) the variation does not result in the period of absence exceeding 52 weeks.
 - (7) Employees on Adoption Leave shall provide the employer with at least one month's notice in writing of their intention to resume duty:
 - (a) provided that the employer may accept a shorter period of notice in circumstances s/he considers exceptional; and
 - (b) provided that such employees shall not resume duty until they have been instructed to do so by the employer.

4.9 Bereavement leave

The employer shall grant to an employee leave with pay in the event of the death of a near relative of her/him for a period not exceeding three working days.

4.10 Jury service

- (1) An employee not working in a school, who is called for jury service, is allowed the necessary leave of absence, on full-pay, and is not to be paid jury fees but only out-of-pocket expenses allowed by the Crown.
- (2) Where a school-based employee who is on recreation leave is called for jury service and elects to waive his or her right of exemption from that jury service, s/he shall not be credited with leave for the time occupied with that jury service.
- (3) Where a school-based employee who is not on recreation leave is called for jury service and elects to waive her/his right of exemption from that jury service, s/he shall be treated for all purposes as if s/he were on leave without pay.

- (4) An employee who is called for jury service must advise the supervising officer as soon as possible that the first mentioned employee is required for jury service.
- (5) Where an employee not based in a school is called upon for jury service and is on leave, s/he shall not lose the benefit of that leave, and will be credited with the time occupied with the jury service and shall be permitted to take such leave with pay at the end of the jury service or at a later date according to the exigencies of the employer.

5 Travelling scholarships

- (1) The relevant Head of Agency may, subject to this clause, award annual travelling scholarships of such number, not exceeding 18, as the relevant Head of Agency may approve.
- (2) A travelling scholarship shall be for the purpose of enabling the employee to whom the scholarship is awarded to travel outside this State in order to undertake an approved special course of study, or approved special investigations of an educational nature, at an approved university, teachers' college or similar institution.
- (3) A decision of the relevant Head of Agency with respect to the awarding of a travelling scholarship is final.
- (4) A candidate for a travelling scholarship:
 - (a) shall make application in writing to the relevant Head of Agency not later than 31 December in any year; and
 - (b) shall, with the application referred to in paragraph (4)(a), furnish the relevant Head of Agency with evidence of that candidate's academic ability and teaching skill or other aptitude.
- (5) A travelling scholarship:
 - (a) shall be for a period of six months or for such other period as the relevant Head of Agency may determine; and
 - (b) entitles the holder of the scholarship to leave of absence, on full-pay, for that period and a travelling allowance, not exceeding \$2000, determined by the relevant Head of Agency according to the place selected by that holder for the undertaking of the course of study or investigations to which the scholarship relates.
- (6) The relevant Head of Agency may grant to the holder of a travelling scholarship leave of absence without pay for a period not exceeding 12 months from the date of the expiry of the scholarship for the purpose of continuing a course of study or investigations commenced by that holder during the tenure of the scholarship.
- (7) The holder of a travelling scholarship shall enter into an agreement with the relevant Head of Agency to return to serve as an employee of the Department on the expiration of the term of the scholarship, or any extended term granted under paragraph (6), and to serve as an employee of the Department for a period of two years after that return under the penalty specified in paragraph (8).
- (8) The penalty referred to in paragraph (7) is \$1000.

- (9) The holder of a travelling scholarship shall furnish to the relevant Head of Agency a brief account of the work done during the tenure of the scholarship.

Application

This direction applies to those employees employed or appointed under the *Teaching Service (Tasmanian Public Sector) Award 2000*.

Issued by authority of the Minister administering the *State Service Act 2000* pursuant to Section 14(1). This Direction replaces Ministerial Direction 3 issued on 1 May 2001

Date

Jim Bacon MHA
Premier