

Leave Matters for the NSW Health Service

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Summary The purpose of this Policy Directive is to consolidate all of NSW Health's Policy Directives relating to leave matters for the NSW Health Service thus replacing the need for individual Policy Directives.

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Applies to Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, NSW Ambulance Service, Public Health Units, Public Hospitals, NSW Health Pathology

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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

LEAVE MATTERS FOR THE NSW HEALTH SERVICE

PURPOSE

The purpose of this Policy Directive is to consolidate all of NSW Health's Policy Directives relating to leave matters for the NSW Health Service thus replacing the need for individual Policy Directives.

MANDATORY REQUIREMENTS

NSW Health organisations must comply with all the provisions and requirements set out in this Policy Directive concerning the management and availability of leave for staff employed in the NSW Health Service. In applying this Policy Directive, regard should also be had to the relevant Industrial Award, which may contain more specific provisions. NSW Health Awards can be accessed on the Ministry of Health intranet at: <http://www.health.nsw.gov.au/careers/conditions/pages/default.aspx>.

IMPLEMENTATION

Chief Executives are required to ensure that this Policy Directive is communicated to, and implemented by all staff involved in the administration, management or approval of leave.

REVISION HISTORY

Version	Approved by	Amendment notes
September 2014 (PD2014_029)	Deputy Secretary, Governance, Workforce and Corporate	Policies have been consolidated into one Policy Directive covering leave matters for the NSW Health Service. Leave matters for Ministry of Health and other public service staff are dealt with separately.
PD2006_089, PD2006_013, PD2007_031, PD2006_066, PD2006_091, PD2006_092, PD2008_051, PD2006_094, PD2009_070, PD2006_040, PD2006_043, PD2006_097, PD2009_050, PD2006_095, PD2006_096, PD2005_087, PD2005_154, PD2011_041	Director General	

ATTACHMENTS

1. Leave Matters for the NSW Health Service: Procedures

Leave Matters for the NSW Health Service



Issue date: September-2014

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CONTENTS

1	BACKGROUND.....	6
1.1	Key definitions.....	6
1.2	About this document.....	6
1.3	Legal and Legislative Framework.....	6
2	ANNUAL LEAVE	7
2.1	Full time Employees.....	7
2.2	Part Time Employees.....	7
2.3	Payment on termination.....	7
2.4	Taking of Accrued Annual Leave.....	8
2.4.1	Change in Hours of Work.....	9
2.5	Notice of Annual Leave	9
2.6	Recrediting of Annual Leave in case of sickness.....	9
2.7	Public Holidays and Annual Leave	9
2.8	Accrual of Annual Leave During Leave Without Pay.....	9
2.9	Relieving Higher Grade Prior to Taking Annual Leave.....	10
2.10	Annual Leave Loading.....	10
3	SICK LEAVE	12
3.1	Better Practice Guidelines for sick leave management.....	12
3.2	Sick Leave Eligibility.....	14
3.2.1	Sick Leave Eligibility and Accrual.....	14
3.2.2	Payment for Sick Leave Taken	16
3.2.3	Workers Compensation Issues	16
4	FAMILY AND COMMUNITY SERVICES LEAVE AND PERSONAL /CARERS LEAVE.....	17
4.1	Family and Community Services (FACS) leave.....	17
4.1.1	Granting of FACS leave	18
4.1.2	FACS Entitlement	18
4.1.3	Additional FACS Leave for Bereavement Purposes	19
4.1.4	Use of Other Leave Entitlements - FACS.....	19
4.2	Personal Carers Leave.....	19
4.2.1	Personal Carers Entitlement	19
4.2.2	Use of Other Leave Entitlements- Personal Carers Entitlement	20
4.3	Flexible Work Practice Alternatives to FACS or Personal /Carers Leave.....	20
4.3.1	Time Off in Lieu of Payment of Overtime	21
4.3.2	Use of Make-up Time.....	21
4.4	Casual Employee Entitlements.....	21
4.4.1	Bereavement Entitlement.....	21
4.4.2	Personal/Carers Entitlement	21
5	MATERNITY, ADOPTION AND PARENTAL LEAVE	22
5.1	Maternity Leave Entitlements	22
5.1.1	Paid Maternity Leave	22
5.1.2	Unpaid Maternity Leave	22

5.2	Adoption Leave Entitlements	23
5.2.1	Payment for Adoption Leave	23
5.3	Parental Leave Entitlements	23
5.4	Rate of Pay for Maternity, Adoption or Parental Leave	23
5.5	Effect of Part Time Leave Without Pay	24
5.5.1	Further Maternity, Adoption or Parental Leave While on Maternity, Adoption or Parental Leave	25
5.6	Other Leave	25
5.7	Applications for Leave	25
5.8	Illness Associated With Pregnancy	26
5.9	Right to Request	26
5.10	Access to Reduced Hours for Employees Following Maternity Leave	26
5.10.1	Returning to Work on a Part time Basis	26
5.10.2	Applying for Return to Work on a Part Time Basis	27
5.11	Maternity, Adoption and Parental Leave Implications - Superannuation	27
5.12	Maternity, Adoption and Parental Leave - Leave Accrual and Increments	27
5.12.1	Full Pay and Half Pay Leave	27
5.12.2	Full Time Unpaid Leave	28
5.12.3	Part Time Unpaid Leave	28
5.13	Right to Return to Previous Position	28
5.14	Other Provisions	28
6	LEARNING AND DEVELOPMENT LEAVE	28
6.1	Eligibility for Learning and Development Leave	29
6.1.1	Seminars, Conferences, and Short Courses	29
6.1.2	Tertiary Study	29
6.1.3	Face to Face	29
6.1.4	Distance Education	30
6.2	Accrual of Learning and Development Leave	30
6.2.1	Residentials	30
6.2.2	Thesis/research or combination thesis/research/coursework	30
6.3	Approval and Review Processes	30
6.4	Payment for Leave	31
6.5	Workers Compensation	31
6.6	Financial Assistance	31
6.7	Data Collection	31
7	LONG SERVICE LEAVE	32
7.1	Introduction	32
7.2	Long Service Leave Provisions	32
7.3	Long Service Leave on Termination	33
7.3.1	Prior Government Sector or Private Employment	33
7.4	Qualifying Service for the Accrual of Long Service Leave	33
7.4.1	Continuous Service	33
7.4.2	Broken Service	33

7.4.3	Leave without Pay.....	33
7.4.4	Previous Part Time Service.....	34
7.4.5	Combinations of Full Time and Part Time Service.....	34
7.5	Part Time and Casual employees – Long Service Leave Provisions	34
7.5.1	Entitlement for Long Service Leave.....	35
7.5.2	Continuity of Service for Long Service Leave.....	35
7.5.3	Public Holidays	35
7.5.4	Payment for Long Service Leave	36
7.5.5	Part Time Employee's Covered by the Health Services Union	36
7.6	Recrediting Long Service Leave.....	36
7.7	Minimum Periods of Long Service Leave	36
7.8	Notice of Long Service Leave.....	36
7.9	Former Provisions for Long Service Leave.....	37
7.9.1	Accelerated Accrual	37
7.9.2	Broken Service	37
7.9.3	Prior Part Time Service.....	38
7.9.4	Part Time Employees.....	38
7.10	Assessment and Calculation of Long Service Leave Entitlements.....	38
8	LEAVE WITHOUT PAY	39
8.1	Granting of Leave Without Pay.....	39
8.2	Effect on Salary Increments	40
8.3	Leave Without Pay - Effect on Leave Entitlements	40
8.3.1	Long Service Leave	40
8.3.2	Other Leave.....	40
8.3.3	Effect of Part Time Leave Without Pay.....	40
8.4	Effect on Salary Maintenance.....	41
9	CHRISTMAS CLOSEDOWN	41
10	GOVERNMENT SECTOR EMPLOYEES CONTESTING ELECTIONS.....	41
11	SPECIAL LEAVE.....	41
11.1	Attendance at State Super Retirement Preparation Seminars	41
11.2	Blood Donors	41
11.3	Special sick leave for bone marrow donors	42
11.4	Jury Duty.....	42
11.5	National Aborigines and Islanders Day Observance Committee (NAIDOC) Week.....	42
11.6	Former Armed Service Personnel (Repatriation) Leave.....	43
11.6.1	Eligibility.....	43
11.7	Volunteer Members of Emergency Organisations.....	43
11.7.1	Emergency Volunteers.....	43
11.7.2	Declared Emergencies.....	44
11.7.3	Proof of Attendance	44
11.7.4	Rest Period.....	44
11.7.5	Emergency Services Courses.....	44
11.8	Witness at Court.....	45
11.8.1	In an Official Capacity	45

11.8.2 In a Private Capacity.....	45
12 LEAVE TO UNDERTAKE DEFENCE FORCE DUTIES.....	45
12.1 Defence Reserve Service.....	45
12.2 Commonwealth Defence Employer Support Payment ('ESP') Scheme	46
13 TRADE UNION LEAVE	46
13.1 Trade Union Activities Regarded as on Duty	47
13.2 Trade Union Leave Activities.....	47
13.3 Trade Union Training Courses.....	48
13.4 Trade Union on Loan Arrangements.....	48
13.5 Period of Notice for Trade Union Activities	49
13.6 Access to Facilities by Trade Union Delegates.....	49
13.7 Travelling and other costs of trade union delegates.....	50
13.8 Responsibilities of the Trade Union Delegate	50
13.9 Responsibilities of the Trade Union	50
13.10 Responsibilities of Workplace Management.....	51
14 LEAVE MANAGEMENT	51
14.1 Leave as service	52
14.2 Recording of leave	52
14.2.1 Annual Leave.....	52
14.2.2 Sick Leave	52
14.2.3 Long Service Leave	53
14.3 Employees transferring within the NSW Health Service.....	53
14.4 Higher Duties Prior to Taking Leave.....	53
15 ALLOCATED DAYS OFF, ANNUAL LEAVE AND DEBITING OF LEAVE – 38 HOUR WEEK	53
15.1.1 Annual Leave.....	54
15.1.2 Sick leave	54
15.1.3 Leave without Pay.....	54
15.1.4 Allocated Days Off (ADOs)	54
16 METHODOLOGY FOR CALCULATION OF ENTITLEMENT – PUBLIC HOLIDAYS	55
17 STAFF MOBILITY	55
17.1 Government Sector Staff Mobility	56
17.1.1 Up to Two Months Break – Effect on Leave	56
17.1.2 Annual (Recreation) Leave	56
17.1.3 Long Service (Extended) Leave	57
17.1.4 Non-declared Affiliated Health Organisations.....	57
17.1.5 Prior Service in Community Health and Fifth Schedule Hospitals.....	58
17.1.6 Medical Officers with the Surf Life Saving Association	58
17.1.7 Nursing Service in Private Hospitals	58
17.1.8 Health Executive Service	58
17.1.9 Sick Leave	58
17.1.10 Maternity Leave, Adoption Leave, Parental Leave, etc.....	59
17.1.11 Access to Forfeited Sick Leave	59

17.2 Accumulated allocated days off	59
17.3 NSW Health Service Financial Arrangements	59
17.3.1 Transferor Division of the NSW Health Service	60
17.3.2 Transferee Division of the NSW Health Service	60
17.3.3 Transfer of Leave Affiliated Health Organisations(AHOs).....	60
17.3.4 Cash Management.....	61
17.4 Health Executive Service.....	61
17.4.1 First Appointment – Incumbent Officers – Accrued Leave.....	61
17.4.2 Notional Salary	61
17.5 Details of Previous Employment Form.....	61

1 BACKGROUND

1.1 Key definitions

Health Executive Service - As described in Part 3 of Chapter 9 of the *Health Services Act 1997* and pursuant to Section 121B (2) a list of positions determined as Health Executive Service is available on the Ministry of Health [website](#).

Government Sector - All of the following (other than any service in which employees are excluded by section 5 of the [Government Sector Employment Act 2014](#)): the Public Service, the Teaching Service, the NSW Police Force, the NSW Health Service, the Transport Service of New South Wales, any other service of the Crown (including the service of any NSW government agency), the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed by the regulations for the purposes of this definition.

Government sector service - In the case of the Public Service, a Public Service agency, or in the case of any other service in the government sector, the group of staff comprising the service or (subject to the regulations) any separate group of that staff.

NSW Health Service - All persons employed under Chapter 9, Part 1 of the [Health Services Act 1997](#) in the NSW public health system.

Public Service - Those persons employed under Part 4 of the [Government Sector Employment Act 2014](#) by the Government of New South Wales in the service of the Crown, consisting of employees of Departments (Part 1 of Schedule 1 of the Act), Executive agencies (Part 2 of Schedule 1) and Separate Public Service agencies (Part 3 of Schedule 1 of the Act). The Public Service does not include the NSW Health Service.

1.2 About this document

This Policy Directive consolidates a number of the Policy Directives relating to leave entitlements and leave administration and management for employees of the NSW Health Service.

The entitlements vary reflecting differing [Award](#) provisions. This Policy Directive summarises the main leave and leave loading provisions as well as providing additional information on their application.

The purpose of this Policy Directive is to:

- Provide information on the application and management of the leave provisions
- Consolidate the information previously provided in a number of Policy Directives into one Policy Directive.

1.3 Legal and Legislative Framework

In addition to the *Long Service Leave Act 1955* and the *Annual Holidays Act 1944*, [Awards](#) covering staff employed in the NSW Health Service contain leave provisions.

It will often be necessary to have regard to the relevant Award provisions. The current Awards can be accessed on the Ministry of Health Internet site at:

<http://www.health.nsw.gov.au/careers/conditions/pages/default.aspx>

NSW Health also has an obligation under the *Carers (Recognition) Act 2010* to demonstrate due regard to the NSW Carers Charter in human resource policies.

2 ANNUAL LEAVE

This section does not apply to members of the Health Executive Service.

2.1 Full time Employees

In accordance with the [Annual Holidays Act 1944](#) all full time employees are entitled to a minimum of four weeks' annual leave in respect of each completed year of service.

The relevant [Award](#) should be checked to determine entitlements to additional annual leave. Temporary employees receive annual leave on the same basis as permanent employees. Temporary employees employed for less than 12 months are paid the monetary value of pro rata annual leave at the conclusion of their engagement.

2.2 Part Time Employees

Two types of part time employees are employed in the NSW Health Service. Each group has different annual leave entitlements.

Permanent part time employees are entitled to the same annual leave provisions as full time employees in the proportion that their ordinary hours of work bear to full time hours. This includes an entitlement to the provisions for additional annual leave for working on Sundays and public holidays where relevant.

Part time employees who receive an adjusted hourly rate (commonly referred to as "old part time employees") are entitled to the provisions of the [Annual Holidays Act 1944](#).

Old part time employees are entitled to four weeks annual leave per year based on the number of hours worked per week, they are not entitled to the additional annual leave of up to one week that may accrue to other employees working on Sundays and public holidays. The relevant [Award](#) should be checked for additional provisions for old part time employees who work at least 30 hours per week over five days per week.

Some Awards state that when determining the ordinary pay of permanent part time employees for the purposes of annual leave that this is to be calculated on the basis of the average weekly ordinary hours worked over the 12 months' qualifying period. Where Awards are silent on this matter, if old part time employees are requested or required to work hours in addition to their contracted hours, annual leave payments should be based on the average weekly ordinary hours worked over the 12 months' qualifying period.

2.3 Payment on termination

The [Annual Holidays Act 1944](#) provides that on termination an employee is entitled to payment in lieu of all annual leave accrued but not taken. It does not affect the obligation of an employer to give, and an employee to take, annual holidays in accordance with the

Act. Should annual leave not be taken as required, an employee forfeits the right to take the entitlement as leave but retains the right to payment in lieu of such leave upon termination.

An employee whose employment terminates prior to the expiration of a period of 12 months from their date of appointment or their last anniversary date of appointment, shall be entitled to a pro rata payment for annual leave, such payment to be calculated on the basis of 1/12th of the employee's ordinary pay for that period of employment per month of employment. Casual and temporary employees are also entitled to payment of the monetary value of pro rata annual leave at the conclusion of each engagement.

Some [Awards](#) include additional provisions related to the pro rate payment of annual leave on termination (for example, the Nurses Award).

Where a terminating employee is on workers' compensation payments for part of the period since annual leave last fell due, the employee's pro rata payment in respect of annual leave is to be calculated on the basis of the ordinary pay for the whole of the period in question.

2.4 Taking of Accrued Annual Leave

Generally, annual leave accrues at the end of each year of employment. If the relevant manager and employee agree, the annual leave may be taken wholly or partly in advance.

The [Annual Holidays Act 1944](#) provides that annual leave accrued is to be taken within six months of its falling due, and that approval is to be given by the Industrial Registrar for the postponement of taking of annual leave beyond six months of it falling due. This provision is binding upon the employer unless the particular [Award](#) states otherwise.

Some NSW Health Service [Awards](#) refer to the *Annual Holidays Act 1944* and so the provision described above apply. Other Awards set out provisions for the taking of leave, usually that annual leave must be given and taken within six months of it becoming due but that deferral for a further six months may occur by mutual agreement. Relevant Awards should be checked to determine what provisions are applicable.

Payment in lieu of annual leave is not permitted except in respect of accrued leave due at the date of termination of services, or where there are [Award](#) provisions enabling additional annual leave to be "paid out".

The leave credits of all staff should be regularly reviewed so as to ensure that, where necessary, leave accrued from previous years is taken without delay.

It is recognised that there may, on occasions, be sound reasons for deferring the taking of accrued leave entitlements (e.g. necessity for key staff to be available for particular duties at specific times, etc.).

In exceptional circumstance, approval may be provided for an employee to defer annual leave up to a maximum of 12 months from it becoming due (thus effectively giving an employee the opportunity to accrue leave up to a maximum of two years).

2.4.1 Change in Hours of Work

Where a full time employee transfers to permanent part time they should be requested to take any outstanding annual leave as soon as possible. Employees must be able to take the leave and such leave must be taken within 12 months from the date of transfer to the new employment arrangement. The leave being transferred is to be taken and paid at the full time weekly rate.

Employees who are permanent part time and who take up full time employment should take all accrued annual leave at the time of transfer to the new arrangement and prior to commencing full time hours.

2.5 Notice of Annual Leave

In most cases employees should be given not less than one month's notice of the date on which they should commence annual leave. The Operational Ambulance Officers (State) Award and the Operational Managers (State) Award provide that at least six months' notice shall be given.

Employees should submit an application for leave for appropriate formal approval at least one month prior to the commencement of the leave.

2.6 Recrediting of Annual Leave in case of sickness

Periods of less than one week shall not be recredited for an employee who is sick while on annual leave.

Employees who are incapacitated for one week or more while on annual leave may apply to have the period of incapacity recredited to their annual leave entitlement and debited against any accrued sick leave entitlement. This provision does not apply to employees on leave prior to retirement, resignation or termination.

Such an application must be supported by a medical certificate stating the period of incapacity, and the employee must have an untaken credit of sick leave entitlement. Where such entitlement is less than the total of the period for which a claim is made, the recredit of annual leave shall not exceed the available sick leave.

2.7 Public Holidays and Annual Leave

The [Annual Holidays Act 1944](#) states that where any special or public holiday to which the employee is entitled occurs during their four weeks annual leave, their leave shall be increased by one day or one half day in respect of the special or public holiday.

Some [Awards](#) also contain provisions relating to public or special holidays during periods of leave.

2.8 Accrual of Annual Leave During Leave Without Pay

Periods of leave without pay in excess of 28 calendar days are not to be counted as service for the purpose of accrual of annual leave.

2.9 Relieving Higher Grade Prior to Taking Annual Leave

Employees who have acted continuously for one year or more in the same higher graded role and who continue to act in that role are eligible for payment of the higher duties allowance for any annual leave which is taken during the further period of higher duties.

2.10 Annual Leave Loading

The annual leave loading provisions described in this section do not apply to employees under the Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award, the Operational Ambulance Managers (State) Award or the Operational Ambulance Officers (State) Award.

For other employees the method of calculating and paying annual leave loading is set out below. However, individual [Awards](#) should also be examined to ascertain the exact annual leave loading provisions applicable to particular employees.

1. Employees, **other than shift workers**, shall be granted an annual leave loading equivalent to 17½% of four weeks ordinary salary.
2. The maximum annual leave loading payable is an amount equivalent to 17½% of four weeks ordinary salary using the maximum Clerk Grade 12 public service salary.
3. Where annual leave is taken in broken periods, the annual leave loading and the maximum amount are calculated pro rata for the broken period in the same proportion as the period of annual leave taken bears to four weeks.
4. Before employees are given and take their annual holiday or where, by agreement between the employer and the employee, the annual holiday is given and taken in more than one period, then before each such separate period, the employer shall pay the employee a loading determined in accordance with this clause. (Note: The obligation to pay in advance does not apply where an employee takes an annual holiday wholly or partly in advance – see paragraph 8).
5. The loading is payable in addition to the pay for the period of holiday given and taken and due to the employee under the [Annual Holidays Act 1944](#) or an Award.
6. The loading is to be calculated in relation to any period of annual holiday to which the employee becomes entitled and where such a holiday is given and taken in separate periods, then in relation to each such separate period.
7. The loading is the amount payable for the period or the separate period, as the case may be, at the rate per week of 17½% of the appropriate ordinary weekly time rate of pay prescribed by Award, agreement or determination for the classification in which the employee is employed, subject to the maximum amount of loading not exceeding the amount specified in paragraph 2.
8. No loading is payable to an employee who takes an annual holiday wholly or partly in advance; provided that, if their employment continues until the day when they would have become entitled under the *Annual Holidays Act 1944* or an Award to an annual holiday, the loading then becomes payable in respect of the period of such holiday and is to be calculated in accordance with paragraph 7, applying the Award rates of pay payable on that day.

9. The annual leave loading is not payable when an employee is paid the monetary value of annual leave to the employee's credit on resignation.
10. Employees who cease working in the NSW Health Service and who commence working immediately in another government sector agency may be entitled to transfer their annual leave loading entitlement under the government sector mobility arrangements. See the Section on staff mobility for more information.

Employees who move between the NSW Health Service and a non-declared affiliated health organisation and who are entitled to elect to transfer their annual leave to the new employer will also have their annual leave loading entitlement transferred. See Section 17 on staff mobility.
11. Employees who transfer between Divisions of the NSW Health Service will retain their accrued annual leave loading entitlements.
12. Upon retirement or termination by the employer for any reason other than misconduct, an employee who has qualified for an annual leave loading by completing 12 months service but who has not taken annual leave since so qualifying, shall be paid the loading which would have been payable had such leave been taken.

No payment is made for proportionate annual leave loading in respect of periods of employment which are less than 12 months.
13. Trainees who are employed for the purpose of completing a training course leading to a qualification which allows the employee to be employed in a trained capacity, and employees covered by the Medical Officers Award whose employment terminates are entitled to the payment of the annual leave loading in accordance with paragraph 12.
14. Provided that where such trainee or medical officer:
 - Has no annual leave due at the time of termination by reason of having taken it in advance
 - Did not receive any annual leave loading payment at the time of taking such leave then such a trainee or medical officer shall be entitled on termination to the payment of an annual leave loading equivalent to that which would have been received under paragraph 13 had the annual leave not been taken in advance.
15. Broken service during a year does not attract the annual leave loading, e.g. if an employee resigns and is subsequently re-employed during the same year, only the service from the date of re-employment attracts the annual leave loading subject to the foregoing conditions.
16. The annual leave loading is to be calculated on the ordinary salary or wage rate payable for the leave when taken, i.e. new rates granted by Award, determination, increment, etc., during the period of leave are to be taken into account unless otherwise prescribed and, if necessary, retrospective adjustment of the loading is to be made.

The rate of payment shall not include any other allowances, penalty or disability rates, commission, bonuses, incentive payments, overtime rates or any other payments prescribed by Awards. An exception to this is in relation to Skilled Trades

classifications where some allowances may be included when calculating the annual leave loading.

17. Part time employees who satisfy the foregoing conditions are eligible for the annual leave loading.
18. The annual leave loading is not payable to trainees who are paid by way of allowance and not by salary or wages.
19. **Shift Workers:** Unless determined otherwise, shift workers proceeding on annual leave are to be paid in respect of the leave taken, the shift and weekend penalty rates relating to ordinary time that they would have earned had they not taken the annual leave, or the annual leave loading in accordance with this section, whichever is the more favourable.

Each [Award](#) should be checked to determine the maximum period of annual leave on which shift and weekend penalties can be paid. Generally, the additional annual leave of up to one week that accrues for work on Sundays and/or public holidays does attract penalty rates. Shift and weekend penalty rates are not payable on annual leave that an employee elects to receive in lieu of penalty rates for working on public holidays.

3 SICK LEAVE

Employees are eligible for sick leave when ill or injured, or, in certain cases, when looking after ill or injured family members. Sick leave is not to be used when absences are not connected with ill health.

Sick leave absences require active management to ensure that:

- in line with work health and safety obligations, employees who are ill or injured do not pose a risk to their own health, safety or wellbeing, nor to those of others at the workplace
- there is minimum disruption to service provision, and organisational viability is secured
- employee entitlements are appropriately managed
- attendance at the workplace is encouraged.

The mandatory requirements for sick leave management are set out in Section 3.1, and supported by the Information Sheets 'Better Practice for Sick Leave Management' and 'Better Practice Checklist for Sick Leave Management' (available on the [NSW Health Intranet](#)). Sick leave eligibility provisions are set out in Section 3.2.

3.1 Better Practice Guidelines for sick leave management

Local procedures in place for managing sick leave must reflect the following elements:

- There must be systems to track, report and manage the taking of sick leave
- Managers must monitor and review sick leave absence levels
- All employees must be made aware of the sick leave policy and procedures, including how sick leave is to be notified (having regard to requirements contained in some

Awards), to whom absences are to be reported and when, the need to complete leave forms for sick leave absences, and the circumstances in which certificates are required.

Certificates are usually not required for absences of two days or less, unless there are particular circumstances involved. For periods of sick leave of up to one week, certificates are required and must be signed by an appropriate registered health service provider (refer to the Information Sheet for the list of acceptable registered health service providers) or other person as listed in the relevant Award. For periods of sick leave that exceed one week, the certificate must be from a registered medical practitioner.

There must appropriate review points in place for sick leave absences, including, as a minimum, points assessing:

- Absences within the first three months of employment (where three separate absences without a medical certificate should be considered unsatisfactory)
- Frequent short term absences (eight separate absences unsupported by medical certificates in any 12 month period should be considered unsatisfactory, but discussions may commence with the employee after five separate unsupported absences)
- Absences displaying trends (for example, periods of unsupported absences immediately before or after a public holiday or approved leave or large amounts of sick leave taken prior to retirement or close to where the employee may work overtime)
- Long-term absences suggesting serious incapacity requiring a review of ongoing employment.

Concerns about sick leave absences must be managed with due regard to procedural fairness for the employee, and with the use of non-disciplinary meetings with the employee in the first instance (when counselling and/or advising a requirement to produce medical certificates for further absences, or referral for fitness assessment if appropriate).

For continued unacceptable sick leave absences, two formal written warnings should be issued proper to consideration of any other disciplinary action. The following process should apply:

- Where there is improvement within six months of a first warning letter, the monitoring of attendance should revert to normal
- Where no improvement is noted within six months of a warning letter, or a further two unsupported absences occur, a second warning letter should be issued (in the first three months of employment, a further unsupported absence within three months should trigger the second warning letter)

- Where attendance remains unacceptable after the second letter, the record should be reviewed by an appropriately delegated officer and consideration given to other disciplinary action, including the possibility of termination.

Refer to the Information Sheet on the NSW Intranet for information that must be included in warning letters and for circumstances where formal warnings may not be appropriate.

Where employees have an illness or injury that may pose a risk to their own health or safety, or the health and safety of others at the workplace, available options include:

- Requesting the employee to provide medical advice from a registered medical practitioner
- Directing the employee to proceed on sick leave while medical advice is being sought
- Referring them for a medical assessment.

Where an employee has no paid sick leave entitlement, they will proceed on sick leave without pay or they may choose to use any available annual or long service leave. Where advice from a registered medical practitioner subsequently provides that they are fit for duty, and a direction to proceed on leave was unnecessary, they must be reinstated for any paid leave taken or reimbursed for salary for any period of unpaid sick leave.

Local procedures must include steps for the management of long-term illness or injury and serious incapacity, including requirements for regular contact with the employee and review points for reviewing their capability of returning to pre-illness or injury duties. Such steps must include return to work programs and return to work interviews with records of any agreed actions placed on the employee's personal file. Return to work programs should be available for employees with significant non-work related illnesses or injuries.

Where there are concerns about the employee's fitness to carry out their duties, action may include seeking the employee's consent to discuss their prognosis with the provider of the medical certificate, or referring them for a further medical assessment. After the assessment, options may include, but are not limited to, return to work on normal or reduced hours/duties, job redesign, work in an alternative position temporarily or permanently, continued absence or medical retirement.

Where there is disagreement or lack of clarity over the outcome of the medical assessment, there must be a review mechanism for employees conducted by an agreed third party.

3.2 Sick Leave Eligibility

3.2.1 Sick Leave Eligibility and Accrual

Subject to the exemptions below, an employee is eligible for paid sick leave when they:

- Are incapacitated in the performance of duties by a physical or psychological illness, an injury, or an illness or injury associated with pregnancy or childbirth (but not pregnancy/childbirth itself)
- Risk further impairment to their health by reporting for duty

- Undergo treatment by a registered health service provider as specified under Evidence of Sickness or incapacity in the Information Sheet 'Better Practice Guidelines' (on the [NSW Health Intranet](#)) where an appointment could not be obtained outside their normal working hours; or the treatment was urgently needed; or they are attending legitimate therapy, training, counselling or rehabilitation (e.g. for a disability, injury or accident, alcohol/drug or gambling dependency, post-traumatic shock, or comparable condition), and provide evidence of need and attendance
- Would, as determined by the relevant manager under the advice of a registered medical practitioner, jeopardise the health, well-being or safety of others by their presence in the workplace, for example by exposing other staff to a communicable disease
- Are required to provide care for another family member who is ill or injured, and the employee does not have the available Personal/Carer's Leave.

Exemptions:

- Casual employees have no entitlement to paid sick leave.
- Any absence for reasons of sickness or incapacity in the first three months of employment will be regarded as sick leave without pay. There is no provision for the back-pay of sick leave taken in the first three months of service once the employee becomes eligible for paid sick leave

Note: This does not apply where an employee is able to transfer entitlements under the provisions outlined in Section 17 or for employees transferring within the NSW Health Service who maintain their accumulated sick leave balance regardless of which Division they are currently working in.

After the first three months of service

Employees become eligible for a full year's entitlement of paid sick leave on the first day of the fourth month of employment. In subsequent years further paid sick leave is available on the anniversary of employment.

Paid sick leave is cumulative and there is no limit to the total accumulation. The monetary value of accumulated paid sick leave is not payable on termination.

Leave without pay (including sick leave without pay and maternity, adoption or parental leave without pay) in excess of 28 consecutive calendar days does not count as service for the purposes of sick leave accrual.

Full-time employees

Individual [Awards](#) must be consulted to determine the amount of paid sick leave available. For the current eligibility for sick leave for full time employees under the various Awards, refer to the Information Sheet on the [NSW Health Intranet](#).

Transferred public service employees

The sick leave entitlements of employees who transfer from the NSW Public Service to the NSW Health Service are dealt with at Schedule 3 of the [Health Administration Act 1982](#).

Part time employees

Part time employees are eligible for paid sick leave on a pro rata basis.

Temporary employees

Temporary employees employed for periods not exceeding 13 weeks have no entitlement to paid sick leave.

Temporary exempt employees engaged for a continuous period in excess of 13 weeks are entitled to sick leave in the same manner as permanent full-time and part time employees.

3.2.2 Payment for Sick Leave Taken

All employees

Sick leave is to be paid at the ordinary rate of pay. Penalty rates (including public holiday penalties), shift allowances, and any other additional allowances are not to be included in payment for sick leave.

The *Public Hospital (Career Medical Officers) (State) Award* and *Public Hospital (Medical Officers) Award* provide that full pay for the purpose of sick leave includes uniform allowance where payable.

Part time employees

Part time employees who receive a part time loading are entitled to their part time loading on any paid sick leave. The part time loading is also payable where an employee rostered to work a weekend shift takes paid sick leave (the weekend penalties are not payable).

Public holidays

An employee who is rostered for duty on a public holiday but takes sick leave is not entitled to any of the usual benefits associated with public holidays. If they are eligible for paid sick leave, they will be paid one day's sick leave, and their sick leave balance will be debited for the number of rostered hours.

Debit of sick leave – 38-hour week

For employees employed under a 38-hour week agreement, sick leave is credited at 76 hours per year. For all employees (other than those employed under the conditions of the Public Health Service Employee Skilled Trades (State) Award, which should be referred to in respect of these employees) leave is to be debited on the basis of the actual hours rostered to be worked.

In addition, subject to special conditions a further four hours sick leave may be available. In summary, once the 76-hour entitlement has been exhausted in any one year and no entitlement has been carried over from previous years, an additional four hours is to be paid even though no credit exists. This concession is granted only for those employees whose [Award](#) provides for a 38-hour week.

3.2.3 Workers Compensation Issues

Where an employee suffers a work-related injury or illness, they are entitled to seek workers compensation. Sick leave should not be used as a substitute for workers compensation. Weekly payments should commence within seven days of the receipt of

the initial Notification of Injury, prior to the determination of liability by the Claims Manager. Provisional payments can be made for a period of up to 12 weeks.

Annual or sick leave entitlements may be utilised from when absence commences until workers compensation payments commence. Once payments have commenced, leave used shall be reinstated.

Claims for damages or compensation other than workers compensation

An employee who suffers an illness or injury which may give them a right to claim damages or compensation (other than workers compensation in relation to Third Party etc.) is required to reimburse the organisation/facility for the monetary value of any sick leave granted for that illness or injury where their claim of damages or compensation is successful.

Before an employee is granted sick leave under the above circumstances, they must complete a written undertaking to include in any general claim for damages a claim for the monetary value of the said sick leave, along the lines:

'In the event of any damages or compensation being recovered by me, either in a contested action, or by way of settlement of any claim made in respect of an accident which occurred on (insert date), involving myself and (insert name of defendant), I undertake to refund to the (insert name of organisation) the monetary value of sick leave granted to me as a result of the injuries or illness sustained in the accident.

I understand that, should any damages or compensation received by me represent a reduction from those which would have been received but for any contributory negligence, (insert name of organisation) may, at its discretion, reduce the amount of the monetary value of the sick leave required to be repaid as a result of this undertaking.'

The employee should be advised to inform their solicitor that a written undertaking to repay the organisation/facility for the monetary value of sick leave exists, and that a claim for this amount should be included in the overall claim for damages.

Where an employee reimburses the monetary value of any sick leave granted, they shall have the amount of sick leave reinstated to their sick leave credits.

4 FAMILY AND COMMUNITY SERVICES LEAVE AND PERSONAL /CARERS LEAVE

This section does not apply to members of the Health Executive Service.

4.1 Family and Community Services (FACS) leave

FACS leave is available for a range of personal reasons encompassing family responsibilities, performance of community service or cases of pressing necessity.

Family responsibilities include those relating to relatives or to members of the employee's household, where relative means a person related by blood, marriage or affinity and where affinity means a relationship that one spouse, because of marriage has to blood relatives of the other, and household refers to a family group living in the same domestic dwelling.

FACS leave is available to full time and part time employees but is not available to casual employees.

4.1.1 Granting of FACS leave

An employee may be granted FACS leave:

- a. To provide care and/or support to sick relatives or members of the employee's household
- b. For reasons related to the family responsibilities of the employee (e.g. to arrange and or attend a funeral of a relative; to accompany a relative to a medical appointment where there is an element of emergency (and in the case of HSU classifications, where there is no element of emergency); parent/teacher meetings; education week activities; to meet elder-care requirements of a relative)
- c. For reasons related to the performance of community service by the employee (e.g. in matters relating to citizenship; to office holders in local government, other than as mayor, for attendance at meetings, conferences or other associated duties; representing Australia or the State in major amateur sport other than in Olympic/Commonwealth Games)
- d. In a case of pressing necessity (e.g. where an employee is unable to attend work because of adverse weather conditions which either prevent attendance or threaten life or property; the illness of a relative; where a child carer is unable to look after their charge).

An employee should not to be granted FACS leave for attendance at court to answer a criminal charge, unless the grant of leave is approved in the particular case.

Applications for FACS leave to attend court, for reasons other than criminal charges (e.g. Family Court), are to be assessed on an individual basis.

4.1.2 FACS Entitlement

The maximum amount of FACS leave on full pay that may be granted to an employee is:

- a. Three working days during the first year of service, commencing on and from 1 January 1995, and thereafter six working days in any period of two years
- b. One working day, on a cumulative basis effective from 1 January 1995, for each year of service after two years' continuous service, minus any period of FACS leave already taken by the employee since 1 January 1995, whichever method provides the employee with the greater entitlement.

For the purposes of calculating entitlements under (a) or (b) above, a working day for **full time** employees working 38 hours per week shall be deemed to consist of 8 hours, and working day for employees working 35 hours per week shall be deemed to consist of 7 hours. The rate at which FACS leave is paid out and utilised shall be on actual hours absent from the rostered shift.

FACS Leave is available to part time employees on a pro rata basis, based on the average number of hours worked per week, i.e. a working day shall consist of one-fifth of the employee's average weekly hours during the preceding 12 months or during the

employee's period of employment whichever is the lesser period. Refer to the Information Sheet on the [NSW Health Intranet](#) for examples of FACS entitlements.

4.1.3 Additional FACS Leave for Bereavement Purposes

Where FACS Leave has been exhausted, additional paid FACS leave of up to two days may be granted on a discrete "per occasion" basis to an employee on the death of a relative or member of a household.

4.1.4 Use of Other Leave Entitlements - FACS

An employee may be granted other leave entitlements for reasons related to family responsibilities, or community service by the employee. An employee may elect, with the consent of the employer, to take annual leave, long service leave or leave without pay.

4.2 Personal Carers Leave

Personal/carer's leave allows for the flexible use of other leave entitlements (including sick leave) for employees to provide care and/or support for members of the employee's [family or household](#) who are sick.

The personal/carer's leave described in the section is available to full time and part time staff but is not available to casual staff. Casual employees' entitlements to personal carers leave are detailed in Section 4.4.

4.2.1 Personal Carers Entitlement

- a. The entitlement to use sick leave in accordance with this clause is subject to the employee being responsible for the care and support of a person who needs the employee's care and support, and is:
 - A spouse of the staff member
 - A de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person
 - A child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the staff member or spouse or de facto spouse of the staff member
 - A same sex partner who lives with the staff member as the de facto partner of that staff member on a bona fide domestic basis
 - A [relative](#) of the staff member who is a member of the same household.
- b. An employee, other than a casual or other employee who receives a loading in lieu of sick leave, who has responsibilities in relation to a person who needs their care and support shall be entitled to use the untaken sick leave, from that year's annual sick leave entitlement, to provide care and support for such persons when they are ill.
- c. Sick leave accumulates from year to year. In addition to the current year's grant of sick leave available under (b) above, sick leave untaken from the previous three years

may also be accessed by an employee with responsibilities in relation to a person who needs their care and support.

- d. In special circumstances, additional sick leave may be granted. This grant can only be taken from sick leave untaken prior to the period referred in paragraph (c) above.
- e. The employee shall, if required, establish either by a medical certificate or statutory declaration that the illness of the person concerned requires care by another person. The employee has the right to choose the method by which the ground for leave is established, that is, by production of either a medical certificate or statutory declaration.
- f. The employee is not required to state the exact nature of the relevant illness on either a medical certificate or statutory declaration.
- g. The employee shall, wherever practicable, give notice prior to the absence of the intention to take leave, of the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.
- h. In normal circumstances, the employee must not take leave under this section where another person has taken leave to care for the same person.

4.2.2 Use of Other Leave Entitlements- Personal Carers Entitlement

An employee may elect, with the consent of the relevant manager, to take:

- a. Annual leave, including annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties. The payment of the annual leave loading may be deferred in respect of single day absences, until at least five consecutive annual leave days are taken
- b. Annual leave at any time within a period of 24 months from the date at which it falls due
- c. Long service leaver
- d. Leave without pay for the purpose of providing care and support to the person concerned.

4.3 Flexible Work Practice Alternatives to FACS or Personal /Carers Leave

As an alternative to, or in conjunction with FACS or personal/carer's leave, are work practices which permit employees to vary their work arrangements to enable them to combine paid employment with their family or community responsibilities.

Access to time off in lieu of overtime is for the purpose of caring for a prescribed person. The provisions at [Section 4.3.1](#) regarding time in lieu of overtime are applicable only in relation to those employees who have an entitlement to overtime.

Where practicable, policy and procedures as described in [Section 4.3.2](#) regarding use of make-up time can be implemented which provide employees with the opportunity to:

- Be absent from the workplace for short periods of time (e.g. two hours) and be able to make up the time either earlier or later on the same day, or during the following week or month
- Exchange shifts or part shifts with co-workers.

4.3.1 Time Off in Lieu of Payment of Overtime

- a. An employee may elect, with the consent of their manager, to take time off in lieu of payment of overtime at a time or times agreed within 12 months of the said election.
- b. Overtime taken as time off during ordinary time shall be taken at the ordinary time rate, that is, one hour off for each hour of overtime worked.
- c. If, having elected to take time as leave in accordance with paragraph (a), the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12 month period from the date the overtime was worked, or earlier by agreement, or on termination.
- d. Where no election is made in accordance with paragraph (a), the employee shall be paid overtime rates in accordance with the relevant industrial instrument.

4.3.2 Use of Make-up Time

An employee may elect, with the consent of their manager, to work “make up time” where the employee takes time off during ordinary hours for family or community service responsibilities, and works those hours at another time, during the spread of ordinary hours provided in the relevant [Award](#), at the ordinary rate of pay.

An employee on shift work may elect, with the consent of the relevant manager to work “make-up time” (under which the employee takes time off during ordinary hours and works those hours at another time) at the shift work rate which would have been applicable to the hours taken off.

4.4 Casual Employee Entitlements

4.4.1 Bereavement Entitlement

- a. Casual employees are entitled to not be available to attend work or to leave work upon the death in Australia of a [relative](#) or member of a [household](#). The employee and relevant manager shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- b. There must not be a failure to re-engage a casual employee because they accessed the entitlements provided for in this part. The rights to engage or not engage a casual employee are otherwise not affected.

4.4.2 Personal/Carers Entitlement

- a. Subject to the evidentiary and notice requirements in paragraphs (e) – (h) of [Section 4.2.1](#), casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person concerned who is sick and requires

- care and support, or who requires care due to an unexpected emergency, or the birth of a child.
- b. The employee and the relevant manager shall agree on the period for which the employee will be entitled not to be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. A casual employee is not entitled to any payment for the period of non-attendance.
 - c. There must not be a failure to re-engage a casual employee because they accessed the entitlements provided for in this part. The rights to engage or not to engage a casual employee are otherwise not affected.

5 MATERNITY, ADOPTION AND PARENTAL LEAVE

This section does not apply to members of the Health Executive Service.

The [Awards](#) contain comprehensive maternity, adoption and parental leave entitlements for full time and permanent part time employees.

Temporary employees who have been employed for periods of 40 continuous weeks or more immediately prior to the expected date of birth or date of taking custody of the child are entitled to the provisions of this section.

In addition to the provisions under the [Industrial Relations Act 1996](#), “old part time employees” covered by the Health Services Union are eligible for parental leave entitlements as set out in the [Information Bulletin IB2005_062](#) – Health Services Union – Award Changes – Memorandum of Understanding – Old Part Time Employees.

5.1 Maternity Leave Entitlements

5.1.1 Paid Maternity Leave

Full time and permanent part time employees who have completed 40 weeks continuous service are entitled to 14 weeks paid maternity leave.

Maternity leave can commence up to 14 weeks before the anticipated date of birth of the child. Paid maternity leave can be taken at full pay over 14 weeks or half pay over 28 weeks. Untaken paid maternity leave cannot be accrued for future periods of maternity leave.

5.1.2 Unpaid Maternity Leave

Full time and permanent part time employees who are entitled to paid leave are also entitled to a further period of unpaid maternity leave of up to 12 months from the date of birth of the child.

Full time and permanent part time employees who are not entitled to paid maternity leave (i.e. they have not completed 40 weeks continuous service) are entitled to unpaid maternity leave of up to 12 months.

5.2 Adoption Leave Entitlements

Full time and permanent part time employees who are adopting a child and are to be the primary care giver of the child are entitled to adoption leave as follows:

- Where the child is under 12 months of age – not more than 12 months from the date of taking custody of the child
- Where the child is over 12 months of age – not more than 12 months from the date of taking custody with the period of leave to be agreed between the employee and relevant manager.

The primary care giver is the parent who assumes primary responsibility for the care of the child.

5.2.1 Payment for Adoption Leave

Full time and permanent part time employees who have completed 40 weeks continuous service are entitled to payment for a period of 14 weeks of the adoption leave. Paid adoption leave can be taken at full pay over 14 weeks or half pay over 28 weeks. Untaken paid adoption leave cannot be accrued for future periods of adoption leave. Except as provided for in this section, adoption leave is granted without pay.

5.3 Parental Leave Entitlements

Full time and permanent part time staff whose spouse or partner (including same sex partner) is pregnant or is adopting a child may be entitled to parental leave.

A full time or permanent part time employee who has completed at least 40 weeks continuous service prior to the expected date of birth or the date of taking custody of the child is entitled to parental leave of up to 52 weeks.

The 52 weeks parental leave may be taken as follows:

- One week of short parental leave is available at the date of birth of the child or at the date of taking custody of an adopted child
- A further period of extended parental leave is available to employees who are to be the primary care giver of the child.

Eligible employees are entitled to one week of paid parental leave which may be taken at any time during the 52 week parental leave period and may be taken at full pay over one week or at half pay over two weeks. All other parental leave is unpaid.

Untaken paid parental leave cannot be accrued for future periods of parental leave.

Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave unless approved under the [Right to Request](#) provisions.

5.4 Rate of Pay for Maternity, Adoption or Parental Leave

Eligible employees shall be paid maternity, adoption or parental leave at their ordinary rate of pay. Payments may be made, on a normal fortnightly basis, in advance in a lump

sum, or at the rate of half pay over 28 weeks for maternity and adoption leave or 2 weeks for parental leave. Full time employees are paid full time hours during the leave. Permanent part time employees are paid at their contracted part time hours.

Employment records must accurately reflect the hours worked for the purposes of salary and leave accrual. If a permanent part time employee regularly and consistently works either in excess of or less than their contract hours which essentially become the employee's true hours of work, then appropriate action should be taken to adjust those number of specified hours on a permanent basis.

It is acknowledged that in some cases, permanent part time employees may work hours in excess of their contracted hours on a regular basis but due to the nature of the work, these hours cannot be offered on a permanent basis. In these circumstances, the payment for maternity, adoption or parental leave should be made at the average hours worked over the preceding 40 weeks.

Employees must be informed of their correct hours of work and understand the impact that a variation to their hours has on salary payments and leave accruals.

5.5 Effect of Part Time Leave Without Pay

These provisions do not apply to part time maternity, adoption or parental leave without pay taken in accordance with [Section 5.9](#).

Where an employee is on part time leave without pay when they commence maternity, adoption or parental leave the rate of payment is determined as follows:

- If they commenced the part time leave without pay 40 weeks or less before starting the maternity, adoption or parental leave they are paid at their substantive rate.
- If they commenced the part time leave without pay more than 40 weeks before starting the maternity, adoption or parental leave:
 - Where their part time hours have remained constant over the leave without pay period, they are paid at the part time rate
 - Where their part time hours have varied over the leave without pay period, they are paid at a rate based on the average hours worked over the preceding 40 weeks.

In the case of varying hours, the weekly payments to apply to the paid leave are calculated by the following formula:

$$\begin{array}{lclcl}
 \text{Total hrs. worked over 40} & & & & \\
 \text{weeks prior to leave} & \times & \text{Normal weekly} & = & \text{Weekly payment during paid} \\
 & & \text{Rate of pay} & & \text{leave period} \\
 \text{Normal weekly hrs. over 40} & & & & \\
 \text{weeks} & & & &
 \end{array}$$

5.5.1 Further Maternity, Adoption or Parental Leave While on Maternity, Adoption or Parental Leave

The [Awards](#) contain provisions on the rate of payment to apply when an employee commences a subsequent period of maternity leave while on maternity leave or on a return to work on a part time basis following maternity leave.

The same principles should be applied in situations where an employee is on adoption or parental leave and commences a subsequent period of such leave during the currency of the initial period of leave.

5.6 Other Leave

Annual and/or long service leave credits can be combined with periods of maternity leave on half pay to enable an employee to remain on full pay for that period.

5.7 Applications for Leave

An employee who intends to take maternity, adoption or parental leave should notify their relevant manager as early as possible so that arrangements associated with their absence can be made. The notification requirements in the [Awards](#) are:

- Maternity leave – written notice of at least 8 weeks.
- Adoption leave – no specific notice period but the relevant manager should be notified of the intention to take adoption leave as early as practicable.
- Parental leave – written notice of at least 4 weeks and in the case of parental leave associated with the adoption of a child, notification should be as early as practicable.
- The applications for leave should provide the following information:
 - Detail of all other types and periods of leave to be taken consecutively with the maternity, adoption or parental leave
 - The basis on which the payments will be made
 - Anticipated date of return to duty
 - Anticipated date of return to duty on a part time basis (if applicable)
 - An appropriate certificate stating the expected date of birth (medical certificate) or the date of taking custody of the child (official form or notification)
 - In the case of extended parental leave, the employee must provide a statutory declaration stating the period of any maternity or adoption leave sought or taken by their spouse/partner and that they are seeking extended parental leave to be the primary care giver of the child.

As soon as practicable after the birth of the child, an employee shall notify the relevant manager, in writing, of the child's date of birth. In respect to adoption leave, the employee should notify the relevant manager in writing if the date of taking custody of the child is other than the date provided in the application for leave.

After commencing maternity, adoption or parental leave, employees may vary the period of leave once without the consent of the relevant manager and then only with their consent thereafter. A minimum of 14 days' notice must be given, although less notice may be accepted if convenient.

5.8 Illness Associated With Pregnancy

If, because of an illness associated with her pregnancy, an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on paid or unpaid sick leave, annual leave or long service leave prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

Employees who have elected to continue to work prior to the expected date of birth, and who take the occasional day sick leave during that time, are entitled to utilise sick leave under the normal provisions. In these circumstances, there is no requirement to commence paid maternity leave nine weeks prior to the expected date of birth.

5.9 Right to Request

The [Awards](#) contain provisions whereby employees may request:

- To extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of 8 weeks
- To extend the period of unpaid maternity, adoption or parental leave for a further continuous period of up to 12 months
- To return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age*.

Such requests should be considered having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or to service being provided. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

* The Public Health System Nurses' and Midwives' (State) Award does not limit the time for which a request for part time work may be made.

5.10 Access to Reduced Hours for Employees Following Maternity Leave

5.10.1 Returning to Work on a Part time Basis

Applications from employees seeking access to reduced hours following a return from maternity leave should be approved, and where possible the reduced hours be available in the person's substantive role.

The options may include working reduced hours each day over a five day period with rearrangement of work routines as required; job sharing, working from home, and

teleworking or, in the case of a manager, a senior staff member providing management support on the times where the returning manager is not on duty.

Providing the returning employee is agreeable, another option is to return them to a different position at an equivalent level.

Consideration of requests for working reduced hours and the outcome of these requests should be documented by the Health Service Facility. Employees who have had requests denied should be advised of appeal mechanisms, which may include the local Grievance Management Procedures.

5.10.2 Applying for Return to Work on a Part Time Basis

The following applies to applications for a return to work on a part time basis:

- Employees are required to apply for part time leave without pay to reduce their full time weekly hours of work. The balance of unworked hours will be recorded as unpaid maternity, adoption or parental leave
- Employees who return from maternity, adoption or parental leave under this arrangement do so for a specific period and retain their substantive hours with the right to convert to those hours at the end of the approved period of part time work
- Salary and other conditions of employment are applied on a pro rata basis during the period of part time work
- Employees retain their substantive status as full time staff and as such are not entitled to payment of any part time allowance.

5.11 Maternity, Adoption and Parental Leave Implications - Superannuation

The implications of maternity, adoption and parental leave on superannuation are complex and depend on the individual circumstance in each case. For this reason, employees are encouraged to contact their superannuation scheme for advice in relation to their particular situation and requirements for employer and personal contributions.

5.12 Maternity, Adoption and Parental Leave - Leave Accrual and Increments

5.12.1 Full Pay and Half Pay Leave

Periods of full pay maternity, adoption and parental leave count in full (pro rata for permanent part time employees) for leave accrual and incremental progression.

Periods of half pay maternity, adoption and parental leave count for leave accrual and incremental progression on a pro rata basis. Sick leave is to be adjusted on the anniversary of employment following the employee's resumption of duty after the leave.

Leave on half pay is paid leave at a reduced rate and is not a combination of full pay leave and no pay leave. As such, periods of half pay leave must not be combined with any subsequent period of unpaid leave when determining the effect, if any, such period of unpaid leave has on an employee's entitlements.

Public holidays that occur during periods of full pay or half pay maternity, adoption or parental leave are paid at the rate of the leave i.e. either full pay or half pay.

5.12.2 Full Time Unpaid Leave

Refer to [Section 8](#) for information on the effect of full time unpaid leave on increments and leave accrual.

5.12.3 Part Time Unpaid Leave

Employees who return to duty on a part time basis by taking part time leave without pay accrue leave entitlements on a pro rata basis. See [Section 8.3.3](#)

5.13 Right to Return to Previous Position

An employee returning from maternity, adoption or parental leave has the right to resume in their previous role.

If the former role no longer exists, the employee is entitled to be placed in a position nearest in status and salary to that of their former role and for which they are capable or qualified.

If the role held prior to commencing leave was that of an acting or higher duties nature, the circumstances surrounding return to that role would need to be addressed. There is no entitlement to that position in any permanent sense.

Where a female employee suffered a risk or illness associated with pregnancy and was transferred to a more suitable position or to alternate duties prior to the commencement of maternity leave, they should return to their substantive position.

5.14 Other Provisions

The relevant [Award](#) should be consulted in relation to the following matters:

- The circumstances when an employee will have to work again the 40 weeks service to be eligible for paid leave
- Portability of service for entitlement to paid leave
- Employee provisions for replacement employees
- Illness associated with pregnancy
- Transfer to a more suitable position
- Leave to apply in the case of miscarriage or stillbirth
- Effect of premature birth on maternity leave
- Further pregnancy while on maternity leave.

The following documents are also relevant:

IB2005_062 – Health Services Union – Award Changes – Memorandum of Understanding– Old Part time Employees

http://www.health.nsw.gov.au/policies/ib/2005/IB2005_062.html

6 LEARNING AND DEVELOPMENT LEAVE

This section does **not** apply to members of the Health Executive Service or Staff Specialists.

Learning and development leave includes leave granted to undertake tertiary studies at an educational institution and includes leave for examinations, or leave granted to attend external activities, such as conferences, seminars, and short courses.

An educational institution is any institution accredited to provide undergraduate or postgraduate tertiary studies that culminate in a recognised academic or professional qualification including a degree, diploma or certificate.

Leave is not required for the following types of employer supported learning activities that are undertaken by staff on a routine basis, and at which staff are considered to be “on-duty”:

- “In-house” courses or activities
- Mandatory training and education.

Mandatory training and education refers to learning activities which meet identified organisational skills required by the organisation in response to legislative, policy and/or service delivery needs.

6.1 Eligibility for Learning and Development Leave

Leave for learning activities is at the discretion of the organisation but should be made available to all eligible employees within the NSW Health Service.

Both permanent and temporary employees (whether full-time or part time) are eligible to apply for leave. Part time employees are granted leave on a pro rata basis. Casual employees are not eligible for this form of leave.

6.1.1 Seminars, Conferences, and Short Courses

Employees may be granted learning and development leave (and/or financial assistance) for attendance at seminars or short courses if not considered to be on duty. The amount of leave available is at the discretion of the organisation.

6.1.2 Tertiary Study

All employees are encouraged to acquire management skills and qualifications. Areas of skill shortages should be identified and strategies developed to address them, including releasing employees from rostered shifts where there are no alternative and feasible attendance options.

Arrangements should be agreed between the employee and relevant manager prior to the commencement of the course. Leave is not to be approved for failed or repeated subjects.

6.1.3 Face to Face

The amount of leave granted is at the discretion of the organisation. As a guide, in respect of attendance at an educational institution, employees may be granted 50% of compulsory attendance times up to four hours per week per semester or term.

The amount of leave to attend examinations should be based on the specific requirements of the individual course. Pre-examination leave should be granted to employees where it is considered appropriate and there is no direct impact on the provision of services.

6.1.4 Distance Education

The equivalent amount of learning and development leave available for face to face study is to be granted to employees completing accredited courses via alternative delivery options, such as the Internet.

6.2 Accrual of Learning and Development Leave

Learning and development leave associated with tertiary studies may be accrued up to a maximum of five days per semester or term, and may be accrued until the last examination of the semester, or the last attendance day of the semester if there is no final examination.

6.2.1 Residentials

The amount of leave to attend a compulsory residential program should be based on the specific requirements of the course and should be negotiated at the time of application for learning and development leave.

6.2.2 Thesis/research or combination thesis/research/coursework

Periods of leave may also be granted to employees undertaking degrees by thesis, research, coursework, or a combination of these. The amount of leave will be based on four hours per week for each academic year of study. An academic year for these purposes is considered to be a year of full-time study. Where an employee is undertaking the study on a part time basis the periods of leave should be granted on a pro rata basis.

Rather than being taken on a week-to-week basis the leave is available over the course of study in amounts mutually agreeable between the staff member and relevant manager.

6.3 Approval and Review Processes

Local learning and development leave procedures should provide for an approval and review process, which is communicated to all staff.

There should be a response to an application for learning and development leave for tertiary studies within 21 days of receipt. Where learning and development leave is not approved the review process should be completed within a further 14 days.

Where learning and development leave is not approved:

- The reason for non-approval should be clear and in writing to the employee
- The employee should be advised of the availability of a review process
- Advice is timely to allow the employee to consider alternative arrangements.

The following table is a summary of learning and development activities.

Type	Benefit	Leave
Mandatory training/education	Directly to the organisation to meet legislative, policy, or service delivery needs	Not required as employee "on duty"
In-house or employer arranged	Benefit to employee and meets identified need for organisation	Not required as employee "on duty"
Conference, seminar, or short course	Benefit to employee and potential benefit to organisation	Leave may be approved or may be "on duty"
Tertiary education or other registered training provider	Benefit to employee and potential benefit to organisation	Leave may be approved
Personal development	Benefit to employee	No leave available

6.4 Payment for Leave

Leave approved for the purposes of learning activities is to be paid on the basis of the employee's ordinary rate of pay, in relation to the payment of ordinary hours, and excluding penalty rates.

6.5 Workers Compensation

Given the variety of situations in which employees undertake study, specific advice regarding coverage of workers compensation will be provided at the local level.

6.6 Financial Assistance

Fees associated with training that is required by the organisation should be paid for by the organisation.

Employees are responsible for meeting all fees/costs associated with tertiary studies, and fees associated with other educational activities unless scholarships or other forms of financial assistance are available.

6.7 Data Collection

The following data relating to learning activities must be retained:

- Learning and development leave taken (in hours) for external learning activities categorised by:
 - a. Tertiary study

- b. Seminar, conference, or short course.
- Learning activities undertaken on an on-duty basis (in hours) categorised by:
 - a. Tertiary study
 - b. Seminar, conference, or short course.
- Course names and content
- Classification of staff member.

7 LONG SERVICE LEAVE

7.1 Introduction

This section does not apply to employees under the Ambulance Service of New South Wales Administrative and Clerical Employees (State) Award, the Operational Ambulance Managers (State) Award or the Operational Ambulance Officers (State) Award or to members of the Health Executive Service.

The current long service leave provisions as described in this section are set out in the relevant [Awards](#) and in the [Long Service Leave Act 1955](#).

The rights of employees employed at the date at which the current provisions came into operation have been preserved; therefore, when such employees apply for long service leave, it must be determined which set of provisions is more favourable to the employee in the particular circumstances and long service leave should be paid accordingly. Further information on the former provisions is included at [Section 7.9](#).

7.2 Long Service Leave Provisions

Full time employees are eligible for two months long service leave after ten years' service and then five months long service leave for each ten years' service thereafter.

Employees with at least seven years' service and less than ten years' service are entitled to proceed on a proportionate period of long service leave on the basis of two months long service leave for ten years' service.

A table setting out the long service leave entitlements in an Information Sheet available on the [NSW Health Intranet](#).

Permanent part time employees are entitled to long service leave based on the actual period of service. However, the payment due for the long service leave is at an adjusted monetary rate based on the full time equivalent period of leave.

An employee with an entitlement to long service leave may elect to access the entitlement on full pay, on half pay or on double pay.

When taking long service leave, if the employee would otherwise have had a rostered shift fall on a public holiday during the period, the amount of long service leave to be deducted is reduced by one day for the public holiday.

7.3 Long Service Leave on Termination

On termination from the NSW Health Service, an employee is entitled to receive the monetary value of all long service leave accrued and not taken at the date of termination.

Employees who have completed at least five years' service and less than seven years' service and whose services are terminated for any reason other than serious and wilful misconduct, or who resign their employment on account of illness, incapacity or domestic or other pressing necessity, are entitled to a pro rata payment for long service leave on the basis of two months leave for ten years' service.

The taxation of long service leave paid on termination differs depending on when the long service was accrued. Employees should seek advice from the Australian Taxation Office or from their tax agent about the taxation implications of charging long service leave taken against their entitlements in other than the order in which the entitlements accrued.

7.3.1 Prior Government Sector or Private Employment

Refer to the section on staff mobility for information about when prior service is counted towards long service leave.

7.4 Qualifying Service for the Accrual of Long Service Leave

7.4.1 Continuous Service

All full time and permanent part time continuous service in the NSW Health Service counts towards the accrual of long service leave.

For the purpose of this section, continuous service has the same meaning as in the Schedule 2 of the [Government Sector Employment Regulation 2014](#).

7.4.2 Broken Service

The relevant [Award](#) should be consulted in the case of broken service in the NSW Health Service to check whether it counts towards the accrual of long service leave.

7.4.3 Leave without Pay

For an employee with less than ten years' service, leave without pay does not count as service towards long service leave.

Once an employee has completed ten years net service (i.e. excluding any leave without pay), leave without pay of less than six months duration counts as service for long service leave.

Leave without pay in excess of six months duration does not count as service for the accrual of long service leave.

This provision applies to leave without pay taken after the commencement of the current long service leave provisions. See the Information Sheet on the [NSW Health Intranet](#) for the relevant date for each [Award](#).

These provisions apply when an employee takes sick leave without pay, or maternity, adoption or parental leave without pay.

7.4.4 Previous Part Time Service

The provisions of each [Award](#) should be consulted when assessing previous part time service (where it is not permanent part time service).

Generally, where [Awards](#) do allow recognition of previous part time service, this service must be the equivalent of at least two days per week and the part time service must merge without a break with the subsequent full time or permanent part time service. The part time service is converted to a full time equivalent and recognised accordingly.

Permanent part time service attracts the same long service leave entitlements as full time service on a pro rata basis. The part time service that this section applies to is commonly referred to as “old part time”.

7.4.5 Combinations of Full Time and Part Time Service

Full Time and Permanent Part Time

Employees who have a combination of full time and permanent part time service are entitled to long service leave based on the actual period of service. The payment due for the long service leave is at an adjusted monetary rate based on the full time equivalent period of leave.

For example, an employee with 10 years full time service and five years permanent part time service (at 0.5 full time equivalent) would have 15 years' service (or 12 years 6 months on a full time equivalent basis). If the employee was to take their full long service leave entitlement they would be paid at the rate which applies to leave which accrues for 12 years 6 months service i.e. 3 months 7½ days.

Full Time, Permanent Part Time and Old Part Time

Employees may have a mixture of previous full time/permanent part time and old part time service. For example, a nursing employee employed as an old part time employee, with eight years previous full time service and four years completed part time service, the total service for long service leave entitlements would be 12 years and long service leave would be due under the [Long Service Leave Act 1955](#). If the part time employee resigned, they would receive payment for the long service leave accrued and not taken.

If the employee was re-employed sometime later on a full time or permanent part time basis, the employee could only count the previous eight years full time service towards the accrual of long service leave as the prior part time service was not continuous with the current employment. After two years full time service the employee would have completed ten years' service but would only have accrued 12 days long service leave. This is the accrual for two years' service only as the entitlement related to the previous eight years full time service has already been paid when they resigned at the earlier date. Further long service leave will accrue on the basis of 15 days per annum for each year of service.

7.5 Part Time and Casual employees – Long Service Leave Provisions

This section applies to part time employees commonly referred to as “old part time employees”. Permanent part time employees are not covered by this section as they are entitled to the same long service leave provisions as full time staff but on a pro rata basis.

Refer to [Section 7.9](#) for the provisions for part time employees who are eligible for long service leave and who were employed when the long service leave provisions in [Awards](#) were varied in the early 1970s.

Part time staff not covered by the savings provisions and casual staff may be entitled to the provisions of the [Long Service Leave Act 1955](#) or any other relevant Determination.

7.5.1 Entitlement for Long Service Leave

Part time and casual employees may be entitled to long service leave after working for an unbroken period of ten years for an employer. The entitlement is for two months paid leave after ten years' service and one month paid leave for each additional five years' service.

An employee who has completed five years' service (but less than ten years' service) is entitled to a pro rata long service leave payment if they resign as a result of illness, incapacity, domestic or other pressing necessity, are dismissed for any reason other than serious and wilful misconduct or dies.

The correct application of [Awards](#) often precludes the engagement of long term casual employees and consequently the obligation to pay long service leave to casual employees. Nevertheless, casual employees engaged for a consistent period of continuous and ongoing employment that meets the provisions of the *Long Service Leave Act 1955*, are entitled to long service leave. Each case must be determined on its merits.

7.5.2 Continuity of Service for Long Service Leave

Section 4(11)(a1) of the [Long Service Leave Act](#) lists the circumstances which will not constitute a break in continuity of service.

These include changes in the method of employment, e.g. from part time to casual employment or from full time to part time, absences on workers' compensation or on account of illness or injury, interruptions in service made by the employer with the intention of avoiding an employee's rights to long service leave, periods of absence for any reason by leave of the employer, absences caused by industrial disputes or interruptions made by the employer by reason of slackness in trade, or any other absence caused by the employer where the employee returns within two months.

Some absences, such as parental leave, are not counted as time worked. These absences are not included in an employee's period of service when calculating long service leave.

Where a part time or casual employee has previous full time service in the NSW Health Service, this can be counted as service towards long service leave as long as it meets the requirements for continuity as provided under the Act.

7.5.3 Public Holidays

If a public holiday occurs during a period of long service leave an extra day must be included in the long service leave if the public holiday falls on a day the employee would have worked had they not been on long service leave.

7.5.4 Payment for Long Service Leave

Long service leave pay is based on the employee's ordinary pay for the last pay period prior to the leave being taken, or the average weekly ordinary rate of pay earned during the previous five years, whichever gives the highest rate.

The term "ordinary rate of pay" includes the part time or casual loadings but does not include shift work or other penalty payments and overtime payments.

Before taking long service leave the employee may, with the agreement of the relevant manager, be paid in full for the leave or be paid at the ordinary pay rate at their normal regular pay intervals during the long service leave.

7.5.5 Part Time Employee's Covered by the Health Services Union

Part time employees covered by the Health Services Union derive their long service leave entitlements from Determination 15 of 2005. A copy of the determination can be found at [IB2005_062 – Health Services Union – Award Changes – Memorandum of Understanding – Old Part Time Employees.](#)

7.6 Recrediting Long Service Leave

Employees who are incapacitated for a period of at least one week while on long service leave may apply to have the period of incapacity recredited to their long service leave entitlement and debited against their balance of sick leave.

Employees who take long service leave immediately prior to retirement, resignation or termination are not eligible for a recredit of leave on account of illness.

Other employees must support their application with a medical certificate stating the period of incapacity. The entitlement to have long service leave recredited is limited to the credit of sick leave available.

Each application for a recredit of leave should be considered in the light of the circumstances and the nature of the incapacity.

7.7 Minimum Periods of Long Service Leave

There is no legislative or [Award](#) restriction governing minimum periods of long service leave.

Provided that an employee has accrued an entitlement to long service leave, then where an employee and the relevant manager agree, a period of seven days long service leave may be taken by an employee.

Whilst the taking of long service leave is by mutual agreement between an employee and the relevant manager, where an employee has accrued the appropriate entitlement it should be ensured that there are no unnecessary constraints on that leave being taken at a particular time.

7.8 Notice of Long Service Leave

Employees wishing to apply for long service leave should, at least one month prior to the commencement of the leave, complete an application for long service leave and submit it

to the relevant manager. In exceptional circumstances, a shorter period of notice may be approved.

7.9 Former Provisions for Long Service Leave

The long service leave provisions were altered substantially in the early 1970s. The exact date at which they were changed varies and current [Awards](#) include reference to the relevant dates (Refer to the Information Sheet on the [NSW Health Intranet](#)).

The rights of employees employed at the date at which the current provisions came into operation have been preserved; therefore, when such employees apply for long service leave, it must be ascertained which set of provisions is more favourable to the employees in the particular circumstances and the long service leave must be paid accordingly.

The former long service leave provisions in the relevant [Award](#) should be consulted. A table setting out the long service leave entitlements under the former provisions is included in an Information Sheet on the [NSW Health Intranet](#).

An employee's entitlement to long service leave comes from either the former or the current provisions, not a combination of the more attractive elements of each.

7.9.1 Accelerated Accrual

Under the former provisions, some [Awards](#) included an accelerated accrual of service for long service leave for employees in hospitals in climatic zones.

Some [Awards](#) preserve this provision for employees who were employed on the date the conditions changed and either had service in hospitals in the climatic zones prior to the date the conditions changed; or who were employed in such a hospital at the date the conditions changed.

Employees covered by the Public Health System Nurses' and Midwives' (State) Award and the Health Employees Conditions of Employment (State) Award who were employed when the current provisions were introduced and who had or were having service accrued at the accelerated rate and who subsequently resigned and were later re-employed, also retain the option of having long service leave accrue under the former provisions. This applies even though there has been a break in the continuity of service.

A list of facilities that formerly attracted the accelerated recognition of service is listed in an Information Sheet on the [NSW Health Intranet](#).

7.9.2 Broken Service

Under former provisions, in some [Awards](#) broken service could be counted towards long service leave more readily than it can now. This entitlement to count broken service towards long service leave is preserved for employees who were employed at the date that the condition changed. The long service leave clauses in current [Awards](#) refer to this savings provision where relevant.

Conversely, some [Awards](#) are now more generous in terms of recognising broken service than they were under the previous conditions when all service had to be continuous.

7.9.3 Prior Part Time Service

Under former provisions in some Awards, part time and full time service was aggregated to determine the length of service for long service leave. The current requirement for continuity and a minimum of two days per week for previous part time service did not apply.

Current [Awards](#) should be checked as some provide that an employee who was full time on the date that the current provisions were introduced and who had prior part time service, may be granted long service leave under the former provisions if they are more favourable.

7.9.4 Part Time Employees

Under current [Awards](#), part time employees are entitled to long service leave under the [Long Service Leave Act 1955](#).

Under former Award provisions, part time employees were entitled to the accelerated accrual rate if they had service in the hospitals in the climatic zones.

Although the old formulae for calculating part time long service leave differ for each Award, the basic steps of the calculation are:

- Convert the period of part time service to a proportion of full time service (odd days of part time service are counted for calculating the full time equivalent service)
- Calculate the long service leave entitlement (refer to an Information Sheet on the [NSW Health Intranet](#)). Once the full time equivalent service is calculated, any odd days are disregarded when determining the long service leave entitlement
- Calculate payment for the entitlement at the full time rate of pay excluding the part time loading.

Note: The part time service referred to above does not include permanent part time service, which attracts the same long service leave entitlements as full time service on a pro rata basis.

7.10 Assessment and Calculation of Long Service Leave Entitlements

The assessment and approval of long service leave claims, including payment at the time of an employee's resignation or termination includes certifying an employee's prior service, accurately assessing their entitlement, maintaining adequate records of their applications, calculating correctly the monetary value of the employee's entitlement and making the necessary payments.

Claims for long service leave should include consideration of previous service, previous long service leave taken or paid to the employee and any periods of leave without pay.

Statutory declarations should only be accepted as a verification of previous service when every other avenue of confirmation of the period of service has been thoroughly investigated. Every attempt to confirm a period of service, as shown on a statutory declaration, should have been made before leave is granted.

When an employee is claiming previous government service under Schedule 2 of the [Government Sector Employment Regulation 2014](#), they should obtain a statement from their previous employer indicating:

- The employee's date of commencement and termination of employment;
- Details of any long service leave taken during employment or paid on termination
- Details of any leave granted, such as leave without pay, which is not counted as service for long service leave
- The reason for termination.

When the long service leave is determined, it will be expressed in months and days. This entitlement must then be converted to a calendar period of leave and the appropriate payment calculated.

8 LEAVE WITHOUT PAY

This section sets out provisions under which employees may be granted leave without pay and details the effect of leave without pay on incremental progression and the accrual and/or entitlement to other forms of leave. This section does not apply to members of the Health Executive Service.

Employees may also be entitled to, or may have the right to request, full time or part time unpaid maternity, adoption or parental leave. The relevant [Award](#), and the section in this Policy Directive on maternity, adoption and parental leave, provide further information.

8.1 Granting of Leave Without Pay

Employees may be granted up to three years leave without pay subject to the following conditions:

- Good and sufficient reason for the leave must be shown and the relevant manager must be satisfied that the employee intends to resume duty on the expiration of their leave.
- In the case of superannuation contributors, the relevant superannuation fund should be contacted for advice. Employees seeking leave without pay in excess of six months may be required to pay not only their own contributions but the employer's liability for the whole period. Satisfactory arrangements must be made for the employee to pay such contributions as required.
- Employees with annual leave and/or long service leave to credit may conserve such leave when granted leave without pay.
- The conduct and services of the employee should be satisfactory.
- Where leave without pay is taken, salary is to be reduced by the monetary equivalent of the actual hours rostered.
- Where a public holiday or proclaimed local holiday occurs during their period of leave without pay, the employee shall not be credited with the holiday.

8.2 Effect on Salary Increments

Salary increments are subject to deferral by the full amount of leave without pay taken where the period of such leave exceeds 28 consecutive calendar days.

This provision also applies when an employee takes sick leave without pay and maternity, adoption or parental leave without pay.

8.3 Leave Without Pay - Effect on Leave Entitlements

8.3.1 Long Service Leave

Refer to [Section 7.4](#) for information on the qualifying service for the accrual of Long Service Leave.

The same provisions apply when an employee takes leave without pay for reasons related to sickness, maternity, adoption or parental leave.

8.3.2 Other Leave

Leave without pay in excess of 28 consecutive calendar days does not count as service for the purposes of leave entitlements for which a condition of eligibility is a period of service e.g. sick leave, annual leave, paid maternity, adoption and parental leave.

This provision also applies when an employee takes sick leave without pay and maternity, adoption or parental leave without pay.

In relation to eligibility for paid maternity, adoption or parental leave, once an employee has completed 40 weeks continuous service, any subsequent leave without pay does not affect the employee's eligibility for paid leave except if they take more than 40 weeks leave without pay, in which case they are required to again work the 40 weeks continuous service to be eligible for paid maternity, adoption or parental leave. In this context, leave without pay does not include sick leave without pay, maternity, adoption or parental leave without pay or leave without pay associated with an illness or injury compensable under the [Workers' Compensation Act](#).

8.3.3 Effect of Part Time Leave Without Pay

For periods of part time leave without pay of more than four weeks, annual leave and sick leave accrue on a pro rata basis and incremental progression will be based on the hours worked per week.

For employees who have less than ten years' service, only the hours worked each week count as service toward eligibility for long service leave. The period of service is converted to the full time equivalent and credited accordingly.

Once an employee has worked ten years net service, any periods of part time leave without pay of six months or less are counted in full as service for long service leave entitlements.

Employees who have ten years net service or more and who take more than six months part time leave without pay, have only the hours they work each week counted as service for long service leave entitlements.

The time periods referred to above are in relation to the period of the part time leave without pay, not the full time equivalent. For example, four weeks part time leave without pay means four calendar weeks at less than full time hours.

8.4 Effect on Salary Maintenance

Displaced employees who take a period of approved leave without pay and who are subject to three year salary maintenance provisions, are to have the salary maintenance period extended by the period of the approved leave without pay. This does not apply to employees who apply for leave without pay for the purpose of undertaking alternate paid employment.

9 CHRISTMAS CLOSDOWN

The dates of the Christmas Close down are advised in the Public Sector Industrial Relations, NSW Treasury Circular issued annually, and communicated across NSW Health by way of an Information Bulletin.

10 GOVERNMENT SECTOR EMPLOYEES CONTESTING ELECTIONS

The provisions for employees contesting State elections are contained in section 71 of the *Government Sector Employment Act 2013*. In addition, the Public Service Commission's [website](#) provides detailed information on the provisions for government sector employees contesting Local, State or Federal Elections (refer PSC Circulars 2013-03 and 2013-04).

11 SPECIAL LEAVE

This section provides detail on a number of types of special leave that are available to employees. These entitlements are not available to casual staff.

11.1 Attendance at State Super Retirement Preparation Seminars

This section applies to employees who are members of the State Authorities Superannuation Scheme or the State Superannuation Scheme.

Employees who are members of either of the above schemes, and who are invited by State Super (SAS Trustee Corporation) to attend a retirement preparation seminar are eligible for up to two days special leave to attend such seminars (including reasonable travelling time).

11.2 Blood Donors

Employees may be granted special leave to donate blood to the Australian Red Cross Blood Transfusion Service.

The amount of leave granted is restricted to the time reasonably necessary to travel to and from the local Blood Collection Centre and to recuperate after the employee has given blood.

Leave of absence is subject to all essential services being able to be maintained during their absence.

11.3 Special sick leave for bone marrow donors

Special sick leave (a separate entitlement from sick leave) will apply for employees, who are called upon to donate bone marrow, for the ordinary working time lost in attending bone marrow donation procedures.

Special sick leave in this instance should be limited to five days on each occasion and is subject to the production of a medical certificate.

Additional leave, if required, may be accessed from leave credits for sick leave, annual leave or long service leave, or taken as leave without pay.

11.4 Jury Duty

The following procedures apply where employees are summoned for jury duty:

1. On receipt of a jury summons, the employee should immediately advise the relevant manager. They should submit an application for special leave where applicable, prior to attending jury duty, attaching the Sheriff's or Registrar's notification of their required attendance.
2. An employee who is on jury duty at a time when they would otherwise be required for duty should be granted special leave.
3. The employee maintains their full normal wage/salary during jury duty and cannot claim an attendance fee from the Court. They can however claim out of pocket expenses from the Court.
4. The Sheriff or Registrar, on an employee being discharged from jury duty, will certify particulars of their attendance at Court, including any fees paid. The employee on returning to duty must present this certificate to the relevant manager.
5. When the attendance for jury duty occurs during leave of absence from the normal work place (e.g. on rostered leave, annual leave, etc.) the employee should inform the Sheriff or Registrar that the attendance occurred during a period when they were not required for duty including if necessary, the reason. The Sheriff or Registrar will then pay jury fees which can be retained by the employee.
6. Where jury duty carries over a non-working period to a working period, fees for the non-working period may be retained and special leave will be granted in respect of the working period subject to production of a certification from the Sheriff or Registrar.

11.5 National Aborigines and Islanders Day Observance Committee (NAIDOC) Week

An employee who identifies as an Indigenous Australian may be granted up to one day's special leave per year to enable them to participate in NAIDOC Week's celebrations. The dates for NAIDOC Week are advised by Information Bulletin each year.

Leave can be taken at any time during NAIDOC Week, or the employee may seek approval to take the special leave outside the proclaimed period if, due to work commitments, they are not able to take the special leave within the designated week or as some communities choose to celebrate NAIDOC outside the designated week.

No penalty rates are payable for special leave granted under this section. Applications for this leave are to be accommodated wherever possible.

11.6 Former Armed Service Personnel (Repatriation) Leave

11.6.1 Eligibility

Special leave with pay up to a maximum of 6½ working days in any period of 12 months is available to employees who are ex-servicemen or women suffering from a “war-caused” disability needing to seek medical attention during their ordinary working hours.

This leave is available only for matters directly connected with the treatment or care of the prescribed disability. This leave may be granted for:

- Visits to medical officers or attendance at hospital or clinics, whether these be isolated or periodical visits
- Attendance at Limb Factories for the supply, renewal and repair of artificial replacements and surgical appliances.

Evidence of the employee’s attendance for treatment must be produced before the special leave may be paid. The Department of Veterans’ Affairs determines whether the disability is “war-caused”.

This entitlement to special leave is independent of other leave provisions such as sick and annual leave, does not affect their entitlement to other types of leave.

11.7 Volunteer Members of Emergency Organisations

The provisions of this section do not apply where an employee is considered to work in an emergency situation and their absence could jeopardise the proper functioning of the work unit.

11.7.1 Emergency Volunteers

An employee may be granted paid leave of up to five days in any period of 12 months when called upon to assist as a volunteer member of one or more of these organisations:

- The State Emergency Services
- The Volunteer Rescue Association of NSW (or affiliated groups)
- The NSW Volunteer Fire Brigade
- The Rural Fire Service
- The Wireless Institute Civil Emergency Network
- The Cave Rescue Squad
- The Volunteer Coastal Patrol

- The Bushwalkers' Wilderness Rescue Squad.

Where the voluntary organisation remunerates the employee for their work performed they should not also be paid by NSW Health.

11.7.2 Declared Emergencies

Where an emergency is declared under any relevant legislation or by the Governor, employees who volunteer to assist in the emergency are to be granted leave with no upper limit to the leave which may be granted. Leave granted during declared emergencies is not to count towards the five day upper limit specified above.

11.7.3 Proof of Attendance

An application for leave must be accompanied by a statement from the local or Divisional Controller, the Fire Controller, Deputy Fire Controller or the Police, certifying the times of attendance. The leave application should indicate the period and area of attendance together with the name of the organisation to which the volunteer member belonged.

11.7.4 Rest Period

Where a person remains on emergency duty for several days, they may be granted special paid leave to allow them reasonable time for rest before returning to normal duties, except in situations where the days off coincide with the employee's normal rostered days off duty.

Where a person does not remain on emergency duty for several days but assists in an emergency service at such time as it would be unreasonable to expect them to report for duty at the normal time, then up to one day leave for rest purposes may be granted.

In the case of an emergency other than a declared emergency, this leave is to be included in the general limit of five days in any period of 12 months.

11.7.5 Emergency Services Courses

Where the Director of State Emergency Services considers it essential that an employee attend a course, every effort should be made to release the person from duty. Where the person is so released, the necessary absence from work is regarded as being on duty.

The Director of the State Emergency Services may also nominate other persons, whose attendance is not regarded as essential, to attend courses, training or lectures. In these circumstances special leave may be granted for the time they are necessarily absent from duty. A certificate of attendance is necessary.

In addition, emergency volunteers nominated to attend courses that are approved or organised by the Rural Fire Service may be granted leave to attend up to ten working days in any period of 12 months.

Applications are to be supported by written approval of the Rural Fire Service. Approval for leave is subject to the employee's absence not impacting on the provision of services and written confirmation of attendance being provided.

11.8 Witness at Court

11.8.1 In an Official Capacity

When an employee is subpoenaed or called as a witness in an official capacity to attend court on behalf of the Crown (whether in right of the State or Commonwealth) they are regarded as being on official duty and may not retain any monies paid to them as witnesses but must pay the whole of such monies to NSW Health. The employee is entitled to be paid all necessary expenses incurred in consequence of being so subpoenaed or called as witness, including travelling expenses if it is necessary to travel to attend court. These expenses shall be met by NSW Health.

When employees are subpoenaed or called as a witness in an official capacity on behalf of a party other than the Crown, they are still regarded as on official duty and may not retain any monies paid to them as witnesses. Out-of-pocket expenses are to be met by the party concerned. A claim for the cost of salary paid during the period an employee so subpoenaed is absent from their duties is to be submitted to the party concerned.

11.8.2 In a Private Capacity

When an employee is subpoenaed or called as witness in a private capacity on behalf of the Crown (whether in right of the State or Commonwealth), they shall be granted special leave with pay and may not retain any monies paid to them as witnesses but must pay the whole of such monies to NSW Health. The cost of travelling and subsistence expenses in such cases will be met by the Attorney General's Department or Commonwealth Government, as the case may be.

When an employee is subpoenaed or called as witness in a private capacity on behalf of a party other than the Crown, they shall be granted leave without pay or annual leave, as available, and they may retain all monies paid to them as witnesses.

12 LEAVE TO UNDERTAKE DEFENCE FORCE DUTIES

This section outlines the amount of paid leave an eligible employee is entitled to when undertaking any form of Defence Service and should be read in conjunction with the [Defence Reserve Service \(Protection\) Act 2001](#) (the Act).

12.1 Defence Reserve Service

Paid and unpaid Defence leave may be granted to employees who are members of the Australian Defence Force Reserves. The leave may be used to undertake any form of Defence service.

- a. The maximum amount of paid Defence leave that may be granted during a period of 12 months commencing on 1 July each year is up to 20 working days.
- b. Where the Commanding Officer of a unit of the Reserves certifies in writing that it is necessary for the employee to render Defence service on days additional to those specified above, additional paid leave is available to be granted for a further period not exceeding four working days in any one defence leave year.

Where there are serious or legitimate concerns over the implications of releasing an employee for Defence service for a particular period of time or at a particular time, an alternative appropriate time may be negotiated that is mutually convenient to both parties. The Defence Force will attempt to accommodate such concerns wherever possible. However, if a more acceptable arrangement cannot be negotiated, the Act provides that it is an offence for an employer to hinder or prevent an employee from rendering Defence service and that it is an offence to discriminate against them on such grounds.

- c. At the option of the employee, any leave required in excess of the 20 or 24 days of paid Defence leave may be taken as recreation or long service leave. If more Defence service is required than that covered by paid Defence leave provisions, it may be taken as leave with or without pay.
- d. Where a public holiday falls within a period of Defence leave, such holiday shall not be debited as a day from the employee's defence leave entitlement.
- e. Paid Defence leave is not intended and should not be granted as a means of offsetting training which the employee is required to undertake as part of their training requirements on days they would not ordinarily have worked or outside of normal working hours. This applies regardless of whether any leave remains untaken.

12.2 Commonwealth Defence Employer Support Payment ('ESP') Scheme

The ESP Scheme is designed to compensate employers for the absence of employees on Defence service.

Further information on the scheme, including the ESP Scheme's current rate of compensation and how to apply can be obtained from the Department of Defence at <http://www.defence.gov.au/reserves> or by phone on 1800 803 485.

13 TRADE UNION LEAVE

This section excludes members of the Health Executive Service.

This section applies to trade union activities undertaken by employees. These provisions do not apply if more generous provisions are provided for in an [Award](#).

Except as specified in this section or in [Awards](#), employees who are accredited trade union delegates, or who act as employee representatives, are to do so in their own time, outside their normal working hours and at their own expense.

Trade union or union means a registered trade union, as defined in the [Industrial Relations Act 1996](#) as amended from time to time.

Trade union delegate means an accredited trade union delegate responsible for their workplace and/or a person who is elected by the trade union as its representative, an executive member or a member of the trade union's council.

13.1 Trade Union Activities Regarded as on Duty

A trade union delegate will be released from the performance of normal duty when required to undertake any of the activities specified at (i) to (viii) below.

- i. Attendance at meetings of the workplace's Work Health and Safety (WH&S) Committee and participation in all official activities relating to responsibilities of elected WH&S Committee members at a place of work as provided for in the [Work Health and Safety Act 2011](#) and *Work Health and Safety Regulation 2011*
- ii. Attendance at meetings with workplace management or workplace management representatives
- iii. A reasonable period of preparation time by agreement with management, where operational requirements allow the taking of such time, before:
 - a. Meetings with management
 - b. Disciplinary or grievance meetings with a union member requires the presence of a delegate.
- iv. Giving evidence in court on behalf of the employer
- v. Appearing as a witness before the Industrial Relations Commission
- vi. Representing the trade union at the Industrial Relations Commission as an advocate or as a Tribunal Member
- vii. Presenting information on the union and union activities at induction sessions for new employees
- viii. Distributing official union publications or other authorised material at the workplace, provided that a minimum of 24 hours' notice is given to workplace management, unless otherwise agreed between the parties. Distribution time is to be kept to a minimum and is to be undertaken at a time convenient to the workplace.

While undertaking such activities on a normal rostered day on duty, the trade union delegate will be regarded as being on duty and will not be required to apply for leave.

In circumstances where a trade union delegate is not rostered for duty or is on an allocated/additional day off and is not required by NSW Health to undertake these activities, such time will not be counted as time worked.

13.2 Trade Union Leave Activities

The granting of trade union leave with pay will apply to the following activities undertaken by a trade union delegate.

- i. Attendance at the annual or biennial conferences of the trade union.
- ii. Attendance at meetings of the trade union's Executive or Councils.
- iii. Attendance at annual conference of Unions NSW and the Congress of the Australian Council of Trade Unions.

- iv. Attendance at meetings called by the Unions NSW involving the union which requires attendance of a delegate.
- v. Giving evidence before an Industrial Tribunal as a witness for the union.
- vi. Reasonable travelling time to and from conferences or meetings to which these provisions apply.

Trade union leave with pay counts as service for all purposes.

13.3 Trade Union Training Courses

The following training courses will attract the grant of paid trade union leave:

- i. Accredited WH&S courses and any other accredited WH&S training for WH&S Committee members. The providers of accredited WH&S training courses and the conditions on which paid trade union leave for such courses will be granted shall be negotiated between the Chief Executive and the trade union.
- ii. Courses organised and conducted by the trade union or a training provider nominated by the union. A maximum of 12 working days in any period of two years applies to this training and is subject to:
 - a. The operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff
 - b. Payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc
 - c. NSW Health not being responsible for any travelling and associated expenses incurred in attending such courses
 - d. Attendance being confirmed in writing to the relevant manager by the trade union or a nominated training provider.

Trade union leave with pay counts as service for all purposes.

13.4 Trade Union on Loan Arrangements

Subject to the operational requirements of the workplace, on loan arrangements will apply to the following activities:

- i. Meetings interstate or in NSW of a Federal nature to which a union member has been nominated or elected by the trade union as:
- ii. An Executive Member
- iii. A member of a Federal Council
- iv. A member of a vocational or industry committee
- v. Briefing counsel on behalf of the trade union
- vi. Assisting union officials with preparation of cases or any other activity outside their normal workplace at which the trade union delegate is required to represent the interests of the union

- vii. Country tours undertaken by a member of the Executive or Council of the union
- viii. Taking up of full time duties with the union (excluding Elected Office)
- ix. The following financial arrangements apply to the occasions when an employee is placed on loan to the union:
 - a. The trade union delegate or an authorised union representative whose services are “on loan” to the union will continue to be paid by NSW Health
 - b. NSW Health will seek reimbursement from the union at regular intervals of all salary and associated on costs, including superannuation
 - c. Agreement with the union on the financial arrangements, including agreement on leave matters, must be reached before the on loan arrangement commences and must be documented in a manner negotiated between the Chief Executive and the union.
- x. On loan arrangements negotiated in terms of this section are to be regarded as service for the accrual of all leave, for incremental progression and for continuity of employment purposes.
- xi. On loan arrangements may apply to full time or part time employees and are to be kept to the minimum time required. Where the trade union needs to extend an on loan arrangement, they shall approach the Chief Executive in writing for an extension of time well in advance of the expiration of the current period of on loan arrangement
- xii. Where the Chief Executive and the union cannot agree on the on loan arrangement, the matter is to be referred to the Secretary, NSW Health for determination after consultation with the Chief Executive and the trade union.

13.5 Period of Notice for Trade Union Activities

The Chief Executive or their nominee must be notified in writing by the union or, where appropriate, by the trade union delegate as soon as the date and/or time of the meeting, conference or other accredited activity is known.

13.6 Access to Facilities by Trade Union Delegates

The workplace shall provide trade union delegates with reasonable access to the following facilities for authorised union activities:

- i. Telephone, facsimile and, where available, email facilities
- ii. A notice board for material authorised by the union or access to staff notice boards for material authorised by the union
- iii. Workplace conference or meeting facilities, where available, for meetings with members, as negotiated between local management and the union.

13.7 Travelling and other costs of trade union delegates

- i. Except as specified in paragraph (iii) of [Section 13.10](#), Responsibilities of Workplace Management, travel and other costs incurred by trade union delegates in the course of union activities will be paid by the union.
- ii. In respect of meetings called by the workplace management in terms of paragraph (iii) of [Section 13.10](#), Responsibilities of Workplace Management, the payment of travel and/or accommodation costs, properly and reasonably incurred, is to be made, as appropriate, on the same conditions as apply under [Award](#) provisions for excess fares and travelling and/or relevant policy directives.
- iii. No overtime, leave in lieu, shift penalties or any other additional costs will be claimable by an employee in respect of union activities covered by paid trade union leave or trade union on duty activities provided for in this policy directive.
- iv. The on loan arrangements shall apply strictly as negotiated and no extra claims in respect of the period of on loan shall be made by the trade union or the employee.

13.8 Responsibilities of the Trade Union Delegate

Responsibilities of the trade union delegate are to:

- i. Establish accreditation as a delegate with the trade union and provide proof of accreditation to the workplace
- ii. Participate in the workplace consultative processes, as appropriate
- iii. Follow the dispute settling procedure applicable in the workplace
- iv. Provide sufficient notice to the relevant manager of any proposed absence on authorised trade union business
- v. Account for all time spent on authorised trade union business
- vi. When trade union leave is required, to apply for that leave in advance
- vii. Distribute trade union literature/membership forms under local arrangements negotiated between the Chief Executive and the union
- viii. Use any facilities provided by the workplace properly and reasonably as negotiated at organisational level.

13.9 Responsibilities of the Trade Union

Responsibilities of the trade union in respect of trade union activities are to:

- i. Provide written advice to the Chief Executive about a union activity to be undertaken by a trade union delegate and, if requested, to provide written confirmation to the workplace management of the delegate's attendance/participation in the activity
- ii. Meet travelling, accommodation and any other costs incurred by the trade union delegate, except as provided in paragraph (iii) of [Section 13.10](#) Responsibilities of Workplace Management

- iii. Pay promptly any monies owing to the workplace under a negotiated on loan arrangement
- iv. Provide proof of identity when visiting a workplace in an official capacity, if requested to do so by management
- v. Apply to the Chief Executive well in advance of any proposed extension to an on loan arrangement
- vi. Assist the workplace management in ensuring that time taken by the trade union delegate is accounted for and any facilities provided are used reasonably and properly
- vii. Advise of any leave taken by the trade union delegate during the on loan arrangement.

13.10 Responsibilities of Workplace Management

Where time is required for trade union activities in accordance with this policy directive the responsibilities of the workplace management are to:

- i. Release the trade union delegate from duty for the duration of the trade union activity, as appropriate, and, where necessary, to allow for sufficient travelling time during the ordinary working hours
- ii. Advise the trade union delegate of the date of the next induction session for new employees in sufficient time to enable the trade union to arrange representation at the session
- iii. Meet the travel and/or accommodation costs properly and reasonably incurred in respect of meetings called by the workplace management
- iv. Where possible, to provide relief in the position occupied by the trade union delegate in the workplace, while the delegate is undertaking union responsibilities to assist with the business of workplace management
- v. Recredit any other leave applied for on the day to which trade union leave or release from duty subsequently applies. This does not apply where the trade union delegate is rostered off duty on the day they are required to perform trade union activities or is on an allocated/additional day off duty
- vi. To continue to pay salary during an on loan arrangement negotiated with the union and to obtain reimbursement of salary and on-costs from the union at regular intervals, or as otherwise agreed between the parties if long term arrangements apply
- vii. To verify with the union the time spent by a trade union delegate on union business, if required
- viii. If the time and/or the facilities allowed for trade union activities are thought to be used unreasonably and/or improperly, to consult with the union before taking any remedial action.

14 LEAVE MANAGEMENT

This section provides instruction on the administration of leave and leave records including under what circumstances leave counts as service, how leave should be recorded, the maintenance of personal files and when higher duties allowances are payable during leave.

14.1 Leave as service

All periods of paid leave are regarded as service during which time employees continue to accrue normal leave entitlements. Terminating employees may elect to have their untaken accrued annual leave paid as a lump sum or take the annual leave as service.

Where an employee elects to take the leave as service, the annual leave credit is determined as at their last day of duty. The accrued annual leave is then paid and treated as if the employee were taking the leave. The date of the expiration of the accrued annual leave becomes the last day of service. This last day of service then becomes the date for the final annual leave calculation and payment is made for untaken leave accrued to that date.

Pro rata annual leave paid as a gratuity on termination does not count as service for the calculation of long service leave. As details of service for long service leave entitlements are taken from staff leave records, it is important that these indicate the employee's last date of actual service, noting separately the payment of pro rata leave.

14.2 Recording of leave

Details of all leave taken are to be recorded in the employee's service records.

14.2.1 Annual Leave

Entitlements to annual leave are expressed differently in some [Awards](#) from others. Awards should be checked to determine how annual leave accrues.

Leave accruing is usually recorded on the anniversary of commencement. An interim accrual would need to be recorded when an employee wished to take all leave due on a date which did not coincide with an anniversary, or on the employee's termination, when all accrued leave due is either paid as a lump sum or is transferred to another NSW government sector service under the NSW government sector mobility provisions or to a non-declared affiliated health organisation under the arrangements provided in the *Health Services Regulation 2003*.

The quantum of accrued annual leave for which an employee receives a lump sum payment on termination is not counted as service for the calculation of long service leave.

14.2.2 Sick Leave

Sick leave taken is recorded on the employee's service record in hours. Computerised rostering systems will automatically update staff records when sick leave is taken and automatically provide a balance of hours due or convert sick leave taken to sick leave without pay where necessary.

Sick leave entitlements are cumulative and there is no limit to the balance which can accumulate. Unless the sick leave credit is transferred with the employee to another NSW government sector service under the NSW government sector mobility provisions

or to a non-declared affiliated health organisation under the arrangements provided in the *Health Services Regulation 2003*, an untaken sick leave balance lapses on termination of service and cannot be revived even if the employee resumes service with the same employer at a later date.

New employees are entitled to their first year's sick leave on the first day of the fourth month of employment (immediately after the three months' qualifying period). However, if an employee has transferred a credit of sick leave from another NSW government sector service under the NSW government sector mobility provisions or from a non-declared affiliated health organisation under the arrangements provided in the *Health Services Regulation 2003*, this is available immediately, and the date of credit of further entitlements will be the anniversary of commencement with the previous organisation.

14.2.3 Long Service Leave

Details of all long service leave taken, accrued and transferred from other organisations under the employee mobility provisions must be recorded accurately on the employee's service record.

14.3 Employees transferring within the NSW Health Service

When employees move between Divisions of the NSW Health Service, there is no termination of service as they retain the same employer and therefore retain their accrued leave entitlements.

14.4 Higher Duties Prior to Taking Leave

Employees who have been undertaking higher duties continuously for one year or more in the same higher graded position and who continue to act in that position, are eligible for payment of the higher duties allowance for any annual leave, long service leave, sick leave or family and community service leave which is taken during the further period of relief.

The Public Health System Nurses' and Midwives' (State) Award provides that employees who act in a vacant management position continuously for more than six months are deemed conditionally appointed to that position.

15 ALLOCATED DAYS OFF, ANNUAL LEAVE AND DEBITING OF LEAVE – 38 HOUR WEEK

This section describes payroll procedures in relation to the debiting of leave and ADOs for employees who work a 38 hour week, are entitled to ADOs and who are covered by the following [Awards](#):

- Health Staff' Conditions of Employment (State) Award
- Hospital Scientists (State) Award
- Public Health System Nurses' and Midwives' (State) Award
- Public Hospital Career Medical Officers (State) Award

- Public Hospitals Medical Officers Award
- Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award.

This section is not applicable to Health Managers Levels 5 and 6.

15.1.1 Annual Leave

Annual leave is to be credited in multiples of 38 hours for each week and in multiples of 7.6 hours for each additional day e.g. for work performed on Sundays and/or public holidays.

Annual leave is to be debited and paid in multiples of 38 hours for each complete week taken and in the proportion of 95% of actual rostered hours taken for period of less than one week. The same 95% proportioning applies to leave loading and annual leave shift penalties (e.g. roster for leave period is 40 hours – payment is for 38 hours annual leave and 38 hours loading/penalties).

The 95% proportioning ensures that the leave debit equates to the payment made as a full time employees working an eight hour day is actually paid 7.6 hours salary under the direct rostering system. However, where an employee who does not receive ADOs (e.g. works 7.6 hours per day over five days or 9.5 hours per day over four days), takes one day annual leave, such leave will be debited according to the time worked, not at 95%.

Where payment is made in lieu of additional leave accrued for work performed on Sundays/public holidays it is to be made on the basis of 7.6 hours per day.

15.1.2 Sick leave

Sick leave is to be credited on the basis of 76 hours per year and debited on the basis of the actual hours rostered.

Up to an additional four hours sick leave is available once the 76 hours entitlement has been exhausted in any one year and if the staff member has no sick leave entitlement carried over from previous years.

For example, if an employee who works eight hour shifts is absent on sick leave for a total of ten working days in any one year and has no sick leave carried over from previous years, they will continue to be paid an additional four hours on the tenth day of sick leave even though no sick leave credit exists.

The additional payment will not affect the subsequent year's sick leave entitlement i.e. this additional sick leave is special sick leave, not sick leave in advance.

15.1.3 Leave without Pay

Where leave without pay is taken, salary is to be reduced by the monetary equivalent of the actual hours rostered.

15.1.4 Allocated Days Off (ADOs)

An eligible employee is entitled to 12 ADOs per year. This excludes employees who work 7.6 hours per day over five days or 9.5 hours per day over four days and employees who average 38 hours per week over a period longer than four weeks.

This entitlement is implemented by granting an ADO in each 28 day roster cycle but not during the first four weeks of each year's annual leave entitlement. A year is defined as the period between two consecutive anniversary dates. However, where no annual leave is taken in any one year (e.g. during the first year of employment) an employee will be granted 13 ADOs in that year and 11 in the subsequent year. Additionally, where an employee is granted leave without pay which covers a full 28 day cycle, no ADO is to be granted for that cycle, thus reducing their entitlement in that year to fewer than 12 ADOs.

Accurate records need to be maintained to ensure the correct number of ADOs are granted in any particular year. In order to ensure that only 12 ADOs are granted, in one of the 28 day roster cycles during the year in which an employee takes some part of their annual leave, no ADO is to be granted during the remaining part of that cycle during which the employee is rostered for duty.

16 METHODOLOGY FOR CALCULATION OF ENTITLEMENT – PUBLIC HOLIDAYS

Refer to the Information Sheet on the [NSW Health Intranet](#).

17 STAFF MOBILITY

This section describes entitlements and procedures for the transfer of leave when employees, including members of the Executive Service, move between the NSW Health Service and other NSW government sector services. It also deals with entitlements for employees moving between the NSW Health Service and non-declared affiliated health organisations.

These provisions do not apply to employees moving between divisions of the NSW Health Service as they retain the same employer.

Information on recognition of service with Commonwealth or interstate agencies for Long Service Leave can be found in [Section 17.1.3](#).

Cross government sector leave arrangements

Cross government sector leave arrangements apply where an employee has been permanently transferred between NSW government sector agencies. The cross government sector leave arrangements are found in the [Government Sector Employment Act 2013](#) and the *Government Sector Employment Regulation 2013*.

The [Health Services Regulation 2003](#) provides arrangements for the transfer of leave entitlements for persons moving from a non-declared affiliated health organisation to the NSW Health Service and vice versa.

Schedule 2 of the Government Sector Employment Regulation applies to transfers after February 2014. Schedule 3A of the PSEM Act applies to transfers that occurred between 1 January 2006 and February 2014. For transfers that occurred prior to 1 January 2006, the provisions of the [Transferred Officers Extended Leave Act 1961](#) still apply despite the fact that this Act is now repealed.

Special arrangements apply for the cashing in of accrued annual and long service leave on first appointment to the Health Executive Service (see [Section 17.4](#)).

The provisions of this section should be read in conjunction with the relevant legislation.

17.1 Government Sector Staff Mobility

The cross government sector leave arrangements are subject to the employee ceasing with one NSW government sector service and commencing service immediately with another NSW government sector service or with the service being regarded as continuous

The definitions of “continuous” and “immediately follows” in Schedule 2 of the [Government Sector Employment Regulation 2014](#) should be considered when determining if an employee is entitled to the provisions. Generally, under the definition of “immediately follows”, a break of up to two months is allowed between the periods of employment.

The definition of “continuous” and “immediately follows” may also be applied to employees who cease employment in the NSW Health Service at one NSW Health organisation and then take up such employment at another NSW Health organisation.

17.1.1 Up to Two Months Break – Effect on Leave

Where an employee does not commence duty on the next working day after ceasing a period of employment, a period of time of up to two months between ceasing and starting a new period of employment does not break continuity of service but it does not count towards the accrual of any leave entitlements. This does not apply if the employee is on approved leave during the time between the two periods of employment.

When the employee commences they retain any relevant anniversary dates for accrual of leave from the former period of employment. Future leave entitlements are adjusted to take account of any leave that is transferred or paid out on ceasing a period of employment and the time between the two periods of employment.

17.1.2 Annual (Recreation) Leave

An employee who ceases employment in one NSW government sector service and immediately commences employment in another NSW government sector service may elect to be paid the monetary value of accrued annual leave on termination, or have their entitlement (including the cost of leave loading of 17½% on all remaining base annual leave) transferred on commencement with the new employing organisation. Future accrual of annual leave and annual leave loading will be as per the conditions applying in the new employing organisation.

Where the employee elects to transfer their entitlements, the transferring NSW government sector service is to pay funds equivalent to the value of accrued entitlements (including the dollar value for unpaid annual leave loading and pro rata annual leave loading) to the receiving NSW government sector service.

If an employee elects to transfer their annual leave entitlement and they have in excess of 40 days to credit, the new employing organisation may require the employee to take payment for the leave in excess of 40 days.

Special arrangements apply for the cashing in of accrued annual (recreation) leave on first appointment to the Health Executive Service (see [Section 17.4](#) for details).

17.1.3 Long Service (Extended) Leave

An employee ceasing employment in one NSW government sector service and commencing employment in another NSW government sector service may elect to be paid the monetary value of accrued long service leave on termination, or have their entitlement transferred on commencement with the new employing organisation.

An employee who moves between NSW government sector services shall have their period of service recognised for the purposes of calculating long service leave, provided that the prior service is continuous and the employee's employment in the new NSW government sector service immediately follows their employment in the former organisation.

Where the employee elects to transfer their entitlement, the following shall apply:

- For employees with less than five years aggregate service, no funds transfer is required
- For those employees with five years and longer service an amount equivalent to the accrued entitlement shall be transferred calculated at the salary rate applicable prior to transfer.

If an employee was previously employed in a NSW government sector service, they may elect to transfer their accrued long service leave entitlement when they commence employment in the NSW Health Service. Alternatively, they may elect to be paid the monetary value of their accrued long service leave when they cease employment with the former NSW government sector service.

Employees previously employed in Commonwealth or interstate agencies can have previous service recognised for long service leave purposes but cannot transfer any accrued long service leave entitlements. Any accrued leave is deemed to have been taken or paid out on ceasing with the Commonwealth or interstate agency.

For further information about whether prior service is recognised for long service leave refer to Schedule 2 of the [Government Sector Employment Regulation 2014](#) and to information on the Public Service Commission's website at http://www.dpc.nsw.gov.au/public_employment/conditions_of_employment/hr_expert.

17.1.4 Non-declared Affiliated Health Organisations

The *Health Services Regulation 2013* provides for the arrangements for the transfer of leave entitlements (including long service leave) for persons moving from a non-declared AHO to the NSW Health Service and vice versa.

The Regulation provides that if a person ceases employment with a non-declared AHO and immediately commences employment in the NSW Health Service, they are taken to have the amount of any accrued long service leave to which they were entitled immediately before ceasing to be employed by the non-declared AHO. The same applies when someone moves from the NSW Health Service to a non-declared AHO.

The following provisions apply in relation to the transfer of the leave:

- In relation to a person's accrued long service leave entitlement, a break in employment of up to two months is allowed

- A person may elect to be paid the monetary value of accrued long service leave rather than retaining the entitlement
- The previous employer is liable for the cost of long service leave entitlements that had accrued up to the date of cessation of employment
- These arrangements do not apply when a person ceases to be employed by a non-declared AHO by the operation of an order under section 64 of the *Health Services Act 1997*.
- Where an employee elects to transfer their entitlement to annual leave to the new employer, any annual leave loading entitlement is also transferred. The previous employer is liable for the cost of the transferred annual leave loading entitlement.

17.1.5 Prior Service in Community Health and Fifth Schedule Hospitals

In 1986, employees of the Community Health Services administered by the Ministry of Health were transferred to the Area Health Services. The prior service in Community Health Services is recognised as service for long service leave.

Employees who have prior service in a Fifth Schedule Hospital and who were employed in a public hospital or Area Health Service on or after 1 July 1989, have the prior service in the Fifth Schedule Hospital recognised for the purposes of long service leave.

17.1.6 Medical Officers with the Surf Life Saving Association

Previous service as a medical officer with the Surf Life Saving Association can be counted as service for long service leave purposes. The service must be continuous in accordance with Schedule 2 of the [Government Sector Employment Regulation 2014](#).

17.1.7 Nursing Service in Private Hospitals

The Public Health System Nurses' and Midwives (State) Award provides that employees under that Award are able to count previous service in a licensed private hospital towards their long service leave entitlement if the private hospital becomes a public hospital and the staff member working in the private hospital remains working at the hospital in the NSW Health Service. The service is counted as the rate of 75% of actual time served.

17.1.8 Health Executive Service

Special arrangements apply for the cashing in of accrued long service (extended) leave on first appointment to the Health Executive Service (see [Section 17.4](#) for details).

17.1.9 Sick Leave

An employee who ceases employment in one NSW government sector service and immediately commences employment in another NSW government sector service retains the same amount of accrued sick leave as was accrued on termination of employment with the transferring NSW government sector service.

The future eligibility of an employee to sick leave is to include the amount accrued with the former NSW government sector service and any amount determined in accordance with the conditions in the new NSW government sector service. Under these arrangements there is no "cashing-in" of sick leave or 'funds transfer' for accrued sick leave.

17.1.10 **Maternity Leave, Adoption Leave, Parental Leave, etc.**

This section applies for the purposes of determining whether an employee who ceases to be employed in one NSW government sector service and immediately commences employment in another NSW government sector service is entitled to maternity leave, adoption leave, parental leave or any other leave (other than long service leave) for which a condition of eligibility is a period of service.

The new NSW government sector service must take into account all continuous previous employment and service at the date of transfer. The entitlements are determined in accordance with the new NSW government sector service's conditions. No transfer of funds is required in connection with this entitlement.

17.1.11 **Access to Forfeited Sick Leave**

Employees with continuous service in a NSW government sector service who prior to 13 October 1995 moved to a new NSW government sector service and were not able to transfer their sick leave credit, may access those forfeited sick leave credits at the discretion of the employer when all current sick leave credits have been exhausted.

No payments may be effected on cessation of employment.

17.2 **Accumulated allocated days off**

Where an employee gives notice that they are intending to transfer to another NSW government sector service or to another Division of the NSW Health Service, all reasonable steps should be taken to eliminate any accumulated allocated days off (ADOs) prior to the last day of service.

The NSW government sector mobility provisions do not provide for the transfer of accumulated ADOs between NSW government sector services. Any accumulated ADOs remaining on an employee's last day of service are to be paid out.

In relation to the transfer of employees between Divisions of the NSW Health Service, where there are still accumulated ADOs on their last day of service in the Division, these are to be paid out to the employee. by the Division from which the employee is transferring.

17.3 **NSW Health Service Financial Arrangements**

The financial/accounting arrangements to cover the government sector mobility arrangements are set out below. These arrangements apply when employees transfer to another government sector agency (or vice versa).

These financial/accounting arrangements also apply when employees transfer to another Division of the NSW Health Service. This type of transfer does not involve a change of employer but there is still a need to effect a transfer of the leave liability to the new Division.

The financial/accounting arrangements also apply when employees move between the NSW Health Service and non-declared AHOs as described in [Section 17.1.4](#).

These arrangements apply to all health organisations, as defined in the Accounts and Audit Determination.

17.3.1 Transferor Division of the NSW Health Service

The Division of the NSW Health Service from which an employee is transferred, is to effect payment against the annual leave provision account. The entry is as follows:

Dr	Provision (Liability) Account
Cr	Bank

17.3.2 Transferee Division of the NSW Health Service

The Division of the NSW Health Service to which an employee transfers is to ensure that monies are received from the former public sector employer or former Division of the NSW Health Service or non-declared AHO for annual leave transferred. Alternatively, in the case of transfers from another public sector employer or in relation to employees formerly employed by a non-declared AHO, the Division is to ensure an acquittance is received which clearly indicates that the former employer effected payment to the individual concerned. Assuming payments are to be made to the Division to which an employee transfers, the following entries apply:

Dr	Bank
Cr	Provision (Liability) Account

17.3.3 Transfer of Leave Affiliated Health Organisations(AHOs)

Transfers to and from AHOs are to be accompanied by payment of the value of both recreation leave and long service leave noting that, unlike controlled NSW Health entities, the long service leave liability for the AHO is not assumed by the Crown and is specifically reported as a liability by such entities in their annual financial statements.

When effecting payment to an AHO for long service leave, the following entries apply:

Dr	Receivables
Cr	Bank

(Upon payment to the AHO)

Dr	Bank
Cr	Receivables

(Upon recoupment from Treasury via the Ministry of Health)

When receiving payment from an AHO for long service leave, the following entries apply:

Dr	Bank
Cr	Payable

(Upon receipt from AHO)

Dr	Payable
Cr	Bank

(Upon payment to Treasury via Ministry of Health)

17.3.4 Cash Management

It remains the responsibility of management to determine the cash that needs to be made available each year to fund leave payments.

Under the principles of accrual accounting, NSW Health organisations are to determine the amount of cash required each year from the Operating Budget to meet annual leave payments inclusive of any known commitments for leave liability transferred in accordance with these arrangements.

No requests for supplementation to meet cash leave payments will be considered by the Ministry and management should therefore ensure that cash management is adequately planned in accordance with the above, e.g. for a three year period, to identify any significant movements which are likely to occur for which additional cash will be needed.

17.4 Health Executive Service

17.4.1 First Appointment – Incumbent Officers – Accrued Leave

Division 3 of the [Government Sector Employment Regulation 2014](#) provides for the payment or part payment of accrued annual (recreation) and long service leave on first appointment to an executive position if the person was engaged in the government sector when appointed. The monetary value of the leave is calculated at the rate of pay applicable immediately prior to the appointment to the executive position.

The person retains any rights to long service, annual, sick or other leave accrued (other than that which has been paid as a gratuity as described above).

This provision also applies to the Health Executive Service in accordance with Section 121P of the [Health Services Act 1997](#).

17.4.2 Notional Salary

Notional salary is used for a number of purposes, including the cashing in of annual and long service leave and paying out Executive Service entitlements on termination.

The Public Service Commission's [website](#) advises of the Senior Executive Service notional salary, which also applies to the Health Executive Service.

17.5 Details of Previous Employment Form

Employees should have only one personal file, which is transferred between Divisions of the NSW Health Service when the employee transfers.

In facilitating the transfer of information, the "Details of Previous Employment" form available on the [NSW Health Intranet](#) may be utilised.

In completing the form, the following should be considered:

- Other than the long service leave liability associated with employees of the AHO, no cash is to transfer for long service leave entitlements, the liability of which is absorbed by the Crown rather than being covered by controlled NSW Health entities
- The rate of pay to be used for transfer should be that at the point of transfer, ignoring any retrospective increase yet to be reflected on the employee's record

- Details of all service should be completed in the section provided
- Pro rata annual leave calculations should be made with reference to the [Award](#) which covers the employee. Factors to be applied to total of ordinary pay earned include:
 - 6/46 for Nurses rostered to work on a 7 day basis
 - 5/47 for Principal Hospital Scientists
 - Completed months for Medical Officers and Staff Specialists
 - Proportion of 5 weeks for Medical Superintendents
 - For staff in the Ambulance Service of NSW Division, 1/12, 5/47, 7/45 or 8/44 depending on the employee's entitlement to annual leave
 - 1/12 for others.
- Payroll leave reports and/or payroll screen prints should accompany the Details of Previous Employment form whenever possible.
- Employees who transfer from one Division of the NSW Health Service to another must transfer their accrued credit of annual leave and long service leave.
- Annual leave loading of 17½% is to be included on all base annual leave transferred.
- The monetary calculation of the pro rata component of annual leave should be based on 100% of hours calculated. ADOs should not be taken into account.

The Details of Previous Employment form should be forwarded to the new Division of the NSW Health Service within seven days of the employee's transfer from the previous Division.