

EDUCATION

ED301

EDUCATION ACT 1928

EDUCATION AMENDMENT REGULATIONS (NO. 4) 1991

Made by the Minister for Education.

Citation

1. These regulations may be cited as the *Education Amendment Regulations (No. 4) 1991*.

Principal regulations

2. In these regulations the *Education Act Regulations 1960** are referred to as the principal regulations.

[* Reprinted as at Gazette of 28 September 1989 at pp.3509-3664.
For amendments to 6 September 1991 see 1990 Index to
Legislation of Western Australia, p.226.]

Regulation 130 repealed and regulations substituted

3. Regulation 130 of the principal regulations is repealed and the following regulations are substituted —

Long Service Leave entitlement

“ 130. (1) Subject to these regulations, a teacher is entitled to long service leave of 13 weeks in respect of —

- (a) a period of 10 years continuous service; and
- (b) any subsequent period of 7 years continuous service following the period of 10 years referred to in paragraph (a).

(2) A temporary teacher is required to accrue his or her entitlement to long service leave —

- (a) under subregulation (1) (a) — within 11 calendar years;
- (b) under subregulation (1) (b) — within 8 calendar years;

(3) In these regulations the term “continuous service” when used in relation to long service leave shall be read and construed in accordance with subregulation (4).

(4) Any interruption in the service of the teacher shall not count as service and shall break his or her continuity of service but —

- (a) any period of sick leave with pay;
- (b) any continuous period of approved sick leave without pay that does not exceed 13 weeks;
- (c) any continuous period of approved leave (other than sick leave) without pay that does not exceed 2 weeks;
- (d) any continuous period of absence on workers' compensation that does not exceed 26 weeks; or
- (e) any period of approved leave without pay for the purpose of undertaking studies under regulation 118 (3),

counts as service and does not break the continuity of service and —

- (f) any period of long service leave and any period of school vacation within that period;
- (g) any period during a vacation in which the teacher is not entitled to payment;
- (h) any portion of a continuous absence on approved sick leave without pay that exceeds 13 weeks;

- (i) any portion of continuous absence on approved leave without pay that exceeds 2 weeks;
- (j) any portion of a continuous absence on workers compensation, that exceeds 26 weeks;
- (k) any default period; and
- (l) in the case of a temporary teacher, any period not exceeding 13 weeks during which the teacher's services are not required,

does not count as service but does not break the continuity of service.

(5) In subregulation (4) (k) "default period" means —

- (a) the period commencing from the third anniversary —
 - (i) of the date on which a teacher becomes entitled to take long service leave for 13 weeks; or
 - (ii) if a postponement election by a teacher has been approved under regulation 130E, the date on which the teacher becomes entitled to take long service leave for one semester;
- (b) the period commencing from the date on which a teacher is required to take long service leave under regulation 6 (3) of the *Education Amendment Regulations (No. 4) 1991*,

and ending on the date on which that entitlement has been completely taken.

(6) For the purposes of these regulations where a teacher takes long service leave over more than one term any period of school vacation that occurs between the terms shall be regarded as long service leave.

Conversion to extended long service leave

130A. (1) The chief executive officer may at his or her discretion on application by a teacher approve the conversion of the teacher's ordinary long service leave entitlement to extended long service leave.

(2) In subregulation (1) "extended long service leave" means long service leave for a period longer than the period of ordinary long service leave specified in regulation 130 (1) (a) or (b) at a salary that is reduced in proportion to the longer period so taken but so that the long service leave taken is not greater than twice the long service leave the teacher would have been entitled to take plus any school vacation that occurs during that period had the teacher taken the long service leave to which the teacher is entitled under regulation 130 (1) (a) or (b).

Full time and part time service

130B. A teacher who during the period of continuous service has served on —

- (a) a part time basis is entitled to be paid during long service leave according to the part time service during that period of continuous service;
- (b) a full time basis and a part time basis is entitled to be paid during long service leave according to the full time service and the part time service served during that period of continuous service.

Compaction

130C. Subject to regulation 130F, any entitlement to long service leave arising from part time service may be converted to long service leave for a shorter period on a proportionately higher salary.

Application for long service leave

130D. (1) An application for long service leave shall be made by completing a long service leave application form authorized by the chief executive officer.

(2) An application for long service leave shall be made to the chief executive officer —

- (a) in the year preceding the year in which long service leave is proposed to be taken;
- (b) not later than the date specified by the chief executive officer by notice published in the Education Circular; and
- (c) not later than 2 years after the date on which an entitlement to 13 weeks long services leave has accrued.

Postponement election

130E. Notwithstanding anything in regulation 130D (2) (c), the chief executive officer may, on application by a teacher made within 2 years of the date on which the teacher becomes entitled to long service leave for 13 weeks, approve of the teacher postponing the taking of that entitlement ("a postponement election") until the teacher becomes entitled to take long service leave over one semester.

Long service leave to be taken over a term or semester

130F. (1) Long service leave shall be taken over a complete term or a complete semester or complete school year commencing in the year specified by the applicant from such date as is

approved by the chief executive officer and any portion of a long service leave entitlement that is not exhausted by virtue of the operation of this subregulation shall be credited to the teacher (in these regulations referred to as a "carryover entitlement").

(2) Notwithstanding subregulation (1), the chief executive officer may in special circumstances direct that the provisions of subregulation (1) do not apply.

Pro rata long service leave and carry over credit

130G. (1) A teacher who has a carryover entitlement or carryover entitlements may take the long service leave entitlement conferred by regulation 130 (1) (b) on a pro rata basis (in these regulations referred to as "pro rata long service leave") before the expiry of 7 years if the period of any carryover entitlement or carryover entitlements of the teacher when added to the period of pro rata long service leave equals one complete term.

(2) Any long service leave taken under subregulation (1) may be taken only where the period of pro-rata long service leave and the period of the carryover entitlements equal a period of a complete term but the chief executive officer may in special circumstances permit a teacher to take a carryover entitlement before the teacher's long service leave entitlement and the pro-rata long service leave equals one complete term.

Salary during vacations

130H. The rate of salary payable to a teacher in respect of a school vacation, other than a summer vacation, that occurs within a period of long service leave, shall be the rate of salary payable to the teacher in respect of the period of long service leave. "

Regulation 131 amended

4. Regulation 131 of the principal regulations is amended by repealing subregulation (3) and substituting the following subregulations —

- " (3) The proportional long service leave credit of a teacher, for each period of continuous service less than that required to entitle the teacher to long service leave —
- (a) shall be, in relation to the first ten years of continuous service, for a period of less than ten years, that proportion of 13 weeks as the period bears to 10 years; and
 - (b) shall be, in relation to a subsequent period of 7 years continuous service, for a period of less than 7 years, that proportion of 13 weeks as the period bears to 7 years.

(4) A reference in this regulation to any long service leave entitlement of a teacher under the provisions of regulation 130 includes any carryover entitlement that the teacher has but does not include pro rata long service leave.

(5) Except as provided by this regulation, a teacher is not entitled to a lump sum payment in respect of any period of continuous service that is less than the period of continuous service prescribed in regulation 130 (1) (a) or (b) but is entitled to a lump sum payment in relation to any carryover entitlement that remains to be taken.

Regulation 132 amended

5. Regulation 132 of the principal regulations is amended in subregulation (2) in paragraph (d) by deleting the following —

“ (ii) in respect of an entitlement to a period of long service leave of 26 weeks, the formula —

$$E = (182 - A) \times 30$$

Transitional

6. (1) Where immediately prior to the day on which these regulations come into operation (in this regulation referred to as the “commencement day”) a teacher has completed a period of continuous service exceeding 10 years but not exceeding 15 years and has not taken long service leave in respect of that service, the teacher may in lieu of any entitlement he or she would otherwise have in respect of that service under regulation 130 (1) of the principal regulations as in force after the commencement day elect —

- (a) to complete the 15 years of continuous service and upon completion be entitled to 26 weeks long service leave; or
- (b) to be credited as at the commencement day with long service leave in accordance with the following formula —

$$A = 91 + \frac{(B \times 91)}{C}$$

Where —

- A represents the number of days long service leave credited;
- B represents the number of days continuous service in excess of 10 years;
- C represents the number of days of continuous service in the 5 year period between the teacher's 10th and 15th year of continuous service.

(2) For the purposes of regulation 130 (1) (b) of the principal regulations as in force after the commencement day a 7 year period referred to in that regulation, commences —

- (a) where an election is made under paragraph (a) of subregulation (1), after the day on which 15 years of continuous service is completed; and

- (b) where an election is made under paragraph (b) of subregulation (1), on the commencement day.
- (3) Where as at the commencement day, a teacher has an entitlement to 26 weeks of long service leave, the teacher shall commence that leave not later than 4 years from the date on which that entitlement arose.

KAY HALLAHAN, Minister for Education.
