

## **EMPLOYEES OF THE PUBLIC SERVICE OF NEW SOUTH WALES**

### **SECTION 52(1) DETERMINATION NO 4 OF 2022**

As the Industrial Relations Secretary, I determine, pursuant to section 52 of the *Government Sector Employment Act 2013*, the following conditions of employment:

#### **1. Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or permanent out-of-home care placement of a child**

- (a) An employee who has, or will have completed not less than 40 weeks continuous service (at the expected date of birth, time of adoption, time of altruistic surrogacy or permanent out-of-home care placement) is entitled to up to 14 weeks paid parental leave if the leave is associated with:
  - (i) the birth of a child (or children from a multiple birth) of the employee, the employee's partner or the employee's legal surrogate, the adoption of a child (or children) under 18 years of age by the employee or the employee's partner or the placement of a child (or children) under 18 years of age in permanent out-of-home care with the employee or the employees' partner; and
  - (ii) the employee has or will have responsibility for the care of the child.
- (b) Paid parental leave must be taken in a single continuous period within the first 24 months from the date of birth, adoption, altruistic surrogacy or permanent out-of-home care placement. For birth-related leave, paid parental leave may commence prior to the time of birth as provided in the industrial instrument which applies to the employee.

#### **2. Bonus Paid Parental Leave**

- (a) An employee who has, or will have, completed not less than 40 weeks continuous service (at the expected date of birth, time of adoption, time of altruistic surrogacy, or placement of a child in permanent out-of-home care) is entitled to an additional two-week bonus paid parental leave where each parent has exhausted any paid parental leave offered by their employer.
- (b) Employees who are single parents or whose partners do not have access to or are ineligible for employer paid parental leave will receive the full two weeks of bonus paid parental leave.
- (c) The two weeks bonus parental leave is in addition to the 14 weeks paid parental leave outlined in clause 1.

### **3. Notice Requirements**

- (a) To access paid parental leave, including bonus parental leave, the employee must provide notice in accordance with the industrial instrument which applies to the employee, stating:
  - (i) the period of leave being sought, including the anticipated date of return to duty; and
  - (ii) that the employee will have responsibility for the care of their child for the period during which they are seeking the paid parental leave.
- (b) The employee must notify the employer as soon as possible of any changes to their circumstances that will or is likely to affect their eligibility for paid parental leave prior, or throughout the period of payment.

### **4. Evidence Requirements**

- (a) To access paid parental leave, the employee must provide evidence of the birth, adoption, altruistic surrogacy or permanent out-of-home care placement:
  - (i) for birth-related leave - a medical certificate or birth certificate showing the expected or birth date of the child; or
  - (ii) for adoption-related leave - an integrated birth certificate, or certificate of adoption; or
  - (iii) for altruistic surrogacy-related leave - provision of documentary evidence of the altruistic surrogacy agreement and a statutory declaration advising of the intention to make application for a parentage order as required under the *Surrogacy Act 2010*. A copy of the parentage order must be provided as soon as it is obtained; or
  - (iv) for permanent out-of-home care related leave - provision of a guardianship or permanent placement order for a child or young person.
- (b) To access bonus paid parental leave, the employer needs to be satisfied that an employee's partner has or will have either exhausted paid parental leave provided by their employer or does not have access to employer paid parental leave. An agency may require evidence such as:
  - (i) a letter from the partner's employer confirming paid parental leave has or will have been exhausted or confirming the partner does not have an entitlement to employer funded paid parental leave; or
  - (ii) a statutory declaration from the employee confirming their partner has or will have exhausted paid parental leave or the partner does not have an entitlement or access to employer funded paid parental leave.

### **5. Concurrency of Paid Parental Leave**

- (a) All paid parental leave may be taken concurrently except in circumstances where both parents are employed in the same NSW Government Sector workplace and operational requirements may prevent concurrent leave.
- (b) Employees where both parents are employed at the same NSW Government Sector workplace may take up to four weeks paid parental leave concurrently with their partner. Employees may request to take more than four weeks of paid parental leave concurrently with their partner, which the employer will consider and may reject in accordance with clause 6(c) of this Determination.

## **6. Flexibility for Taking Paid Parental Leave**

- (a) While an employee's eligibility for paid parental leave is determined at the time of birth, adoption, altruistic surrogacy or permanent out-of-home care placement, the employee and employer may agree for the employee to use paid parental leave entitlements at any time within the first 24 months from the date of birth, adoption, altruistic surrogacy or permanent out-of-home care placement.
- (b) An employee may request:
  - (i) to use their paid parental leave entitlement in a manner other than a single continuous period; or
  - (ii) to take more than four weeks of paid parental leave concurrently;
- (c) The employer will consider their operational requirements and the employee's personal and family circumstances in considering requests and may refuse the request on reasonable business grounds related to the impact on the employer's workplace including but not limited to excessive cost, lack of adequate replacement staff, loss of productivity or impact on service delivery. The employer will provide their response to the employee's request within 21 days.
- (d) Should the employer agree to paid parental leave in a manner other than a single continuous period, the period of leave must not extend beyond the first 24 months from the date of birth, adoption, altruistic surrogacy or permanent out-of-home care placement and will not be extended by any periods of public holidays that fall within the paid parental leave period.

## **7. Additional Provisions for Altruistic Surrogacy and Permanent Out-of-Home Care Arrangements**

- (a) Employees in altruistic surrogacy arrangements and permanent out-of-home care arrangements have an entitlement to take 12 months unpaid parental leave, similar to entitlements available to employees who give birth to or adopt a child (12 months' leave of which up to 16 weeks is paid leave available in accordance with this Determination and the remainder unpaid).
- (b) The right to request extended parental leave and return to work on a part time basis is available to employees granted parental leave for altruistic surrogacy and permanent out-of-home care arrangements.
- (c) Where an employee takes paid parental leave in respect of a permanent out-of-home care arrangement and later adopts the child (or children), the employee is not entitled to access a further period of paid parental leave in connection with the adoption.

## **8. Other Rights**

An employee should refer to the industrial instrument, legislation and policies which apply to their employment for all other provisions relating to parental leave.

## **9. Definition of "Partner"**

For the purposes of this Determination, "partner" includes a spouse, de facto partner, former spouse or former de facto partner. De facto partner means a person who is the employee's partner, who lives with the employee on a bona fide domestic basis although not legally married to the employee.

## APPLICATION

This Determination shall apply to full time, part time, ongoing and temporary employees of the Public Service as defined in the *Government Sector Employment Act 2013* employed in the Departments, Public Service executive agencies related to Departments, and separate Public Service agencies as listed in Schedule 1 to the *Government Sector Employment Act 2013*.

It is intended that a maximum of two employees (if both are working in the NSW Government Sector) can access paid parental leave per birth, adoption, altruistic surrogacy or permanent out-of-home care placement.

The provisions in this Determination supersede the provisions in *Determination No. 3 of 2021 Paid Parental Leave* and *Determination No. 1 of 2018 Leave for Employees engaged in Altruistic Surrogacy and Permanent Out of Home Care Arrangements* for children born to or coming into the care of the employee through adoption, altruistic surrogacy or permanent out-of-home care from 1 October 2022.

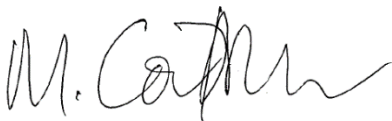
For children born to or coming into the care of the employee through adoption, altruistic surrogacy or permanent out-of-home care prior to 1 October 2022, reference should continue to be made to the provisions available in *Determination No. 3 of 2021 Paid Parental Leave* and *Determination No. 1 of 2018 Leave for Employees engaged in Altruistic Surrogacy and Permanent Out of Home Care Arrangements*.

## DATE OF EFFECT

The above arrangements will apply to children born on or after 1 October 2022 (regardless of the expected date of birth).

In the event of adoption, the above arrangements will apply where the date of the adoption order is on or after 1 October 2022.

In the event of permanent out-of-home care, the above arrangements will apply where the date of the guardianship or permanent placement order is on or after 1 October 2022.



Michael Coutts-Trotter  
**Secretary**  
**Department of Premier and Cabinet**

Dated: 27 September 2022