



New South Wales

Local Government (General) Amendment (Transfer of Accrued Leave Entitlements) Regulation 2006

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Government Act 1993*.

KERRY HICKEY, M.P.,
Minister for Local Government

Explanatory note

The object of this Regulation is to ensure that local government employees who change employment from one council to another council retain their accrued sick leave and long service leave entitlements.

This Regulation is made under the *Local Government Act 1993*, including section 748 (the general regulation-making power) and clause 15 of Schedule 6.

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Clause 1

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Accrued Leave Entitlements) Regulation 2006**

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Local Government Act 1993

1 Name of Regulation

This Regulation is the *Local Government (General) Amendment
(Transfer of Accrued Leave Entitlements) Regulation 2006*.

2 Amendment of Local Government (General) Regulation 2005

The *Local Government (General) Regulation 2005* is amended as set
out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Part 13, Division 5, heading

Omit “(sections 354A and 354E)”.

[2] Clause 406A

Insert after clause 406:

406A Transfer of accrued leave entitlements

- (1) In this clause:
 - award* means the *Local Government (State) Award 2004* as in force immediately before 27 March 2006.
 - employee* does not include a member of the senior staff of a council.
- (2) The provisions of the award relating to the transfer of an employee’s accrued sick leave and long service leave entitlements when changing employment from one council to another (*the relevant award provisions*) apply, by force of this clause, in relation to an employee of a council who changes employment, in the circumstances referred to in the relevant award provisions, from one council to another.
- (3) Without limiting subclause (2), the relevant award provisions that apply by force of this clause include:
 - (a) the liability of the council by which the employee concerned was last employed to pay the council by which the employee is currently employed the cost of the employee’s accrued long service leave entitlement, and
 - (b) the right of the employee concerned to elect to be paid the monetary value of the employee’s accrued long service leave entitlement.
- (4) This clause applies to an employee of a council whether or not the employee was a person to whom the award applied.
- (5) Nothing in this clause affects any leave entitlement of a member of the senior staff of a council under the member’s employment contract.

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Schedule 1 Amendments

- (6) Nothing in this clause affects any entitlement of an employee of a council conferred by or under Part 6 of Chapter 11 of the Act.

Note. Clause 19, Part A of the award includes the following:

- (v) Accumulated sick leave shall be transferable on change of employment from council to council within New South Wales up to 13 weeks, provided that an employee shall only be entitled to transfer sick leave accumulated since the employee's last anniversary date on a pro-rata basis. Such accumulated sick leave shall only be transferable if the period of cessation of service with the council and appointment to the service of another council does not exceed three months. The sick leave entitlement transferred shall not exceed the maximum amount transferable as prescribed by the appropriate award at the time of transfer.

Clause 19, Part D of the award includes the following:

- (iii)
- (a) For the purpose of calculating long service leave entitlement in accordance with subclause (i) of this clause all prior continuous service with any other council within New South Wales shall be deemed to be service with the council by which the employee is currently employed.
- (b) Continuity of service shall be deemed not to have been broken by transfer or change of employment from one council to another provided the period between cessation of service with one council and appointment to the service of another council does not exceed three months and such period is covered by accrued annual and long service leave standing to the credit of the employee at the time of the transfer, provided further that the employee concerned does not engage in work of any kind during the period of paid leave between the cessation of service with one council and appointment to the service of another council.
- (iv) For the purpose of this clause, service shall include the following periods:-
- (a) Any period of service with any of Her Majesty's Forces provided that the employee enlisted or was called up direct from the service of a council.
- (b) In the case of an employee, transferred to the service of a council of a new or altered area - any period of service with the council from which such employee was transferred.
- (c) Service shall mean all service with a council irrespective of the classification under which the employee was employed.
- (v) There shall be deducted in the calculation of the employee's service all leave of absence without payment not specifically acknowledged and accepted by council as service at the time leave was taken.

(vi) When an employee transfers from one council to another, the former council shall pay to the newly employing council the monetary equivalent of all long service leave accruing to the employee at the time of transfer. However, an employee who at the time of transfer has completed at least five years continuous service may elect to be paid the monetary equivalent of the entitlement. Employees who at the time of transfer elect to be paid the monetary equivalent of their long service leave entitlement shall have that entitlement calculated by multiplying in completed years and months their period of continuous service with council(s). A statement showing all prior continuous service with the council(s) of the employee concerned shall be furnished together with details of the assessment of the amount of money that shall be paid into a Long Service Leave Reserve Account and appropriate notations made in the council's Long Service Leave Record.

(vii) A council which has received under subclause (vi) of this clause a monetary equivalent of long service leave entitlement to cover an employee's period of service with a previously employing council(s) shall if the employee subsequently leaves the service of that employing council to seek employment outside New South Wales Local Government before a long service leave entitlement has become due, refund to such previously employing council(s) the amount paid.

Clause 38 of the award includes the following:

(v) Where an employee prior to 11 May 1995, had an entitlement to transfer accumulated sick leave from one council to another council in New South Wales, under the Local Government Senior Officers' Award the employee shall retain this entitlement.