Defence Determination, Conditions of service Amendment (ADF Retention – Parental leave) Determination 2019 (No. 30)

This Determination amends Defence Determination 2016/19, Conditions of service (Principal Determination), made under section 58B of the Defence Act 1903 (Defence Act) and in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (AIA Act).

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the Legislation Act 2003. These instruments are also subject to the interpretation principles in the AIA Act.

Chapter 5 of the Principal Determination sets out provisions dealing with leave for members of the Australian Defence Force (ADF).

The purpose of this Determination is to increase the parental leave benefit from 14 days to 28 days.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this instrument commences on 14 November 2019.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Background

The amendments made by this Determination are endorsed by the ADF Retention Initiative Working Group. They are among several initiatives the working group has identified that will assist with the retention of ADF members and contribute to Defence capability requirements.

Schedule 1—Parental leave amendments

Section 1 amends section 5.7.1 of the Principal Determination, which provides the purpose of the Part providing parental leave benefits. The section formerly provided that the benefit was provided to the member and their dependants. This is incorrect as the leave benefit can only be provided to the member. Section 1 makes the correction.

Section 2 amends subsection 5.7.3.1 of the Principal Determination, which provided that the Chief of the Defence Force may grant a member up to 14 days paid parental leave. The amount is increased to 28 days.

Section 3 omits and substitutes paragraph 5.7.3.1.b of the Principal Determination, which provides a member must become the parent of a newborn or adopted child to be eligible for paid parental leave. Section 3 clarifies that the child must be a dependant of the member.

Section 4 omits and substitutes subsection 5.7.3.4 of the Principal Determination, which provides a member may take their paid parental leave at half pay. Section 4 clarifies that if the member takes the leave at half pay they are eligible for twice the period of leave.

Section 5 omits and substitutes subsection 5.7.4.1 of the Principal Determination, which provides a member must become the parent of a newborn or adopted child to be eligible for unpaid parental leave. Section 5 clarifies that the child must be a dependant of the member.

Section 6 omits the examples from subsection 5.7.4.2 of the Principal Determination. The subsection provides that a member’s total period of parental leave must not total more than 66 weeks. The examples are omitted because they are non-legislative in nature and no longer fit the pattern of paid days increased by this Determination.
Section 7 omits and substitutes section 5.7.5 of the Principal Determination, which provides a member of the Reserves must become the parent of a newborn or adopted child to be eligible for a 66 week break in their service obligation. Section 3 clarifies that the child must be a dependant of the member.

Section 8 omits and substitutes subsection 5.7.6.2 of the Principal Determination, which provides the manner in which paid parental leave may be granted. It must not be granted for periods less than 14 days and may only be granted for two separate periods within the 66 week limit from when the child became the member's dependant.

Section 9 omits the example from subsection 5.7.6.3 of the Principal Determination. The subsection provides that unpaid parental leave may be taken as separate periods within the 66 week limit from when the child becomes the member's dependant. The example is omitted because it is non-legislative in nature.

Section 10 omits and substitutes subsection 5.7.6.4 of the Principal Determination, which provides that the member's 66 week maximum period of parental leave eligibility (paid and unpaid) is reduced by certain leave taken by the member and their spouse or partner. It was unclear whether the 66 week period to be reduced was the number of days' parental leave the member is eligible to take or the period in which the member is eligible to take the parental leave. Section 10 clarifies that it is the number of days the member may take that is reduced.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation 2016. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Navy, Army and Air Force have been consulted in the development of the Determination. The rule maker was satisfied that further external consultation was not required.

Authority: Section 58B of the Defence Act 1903
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Determination

The purpose of this Determination is to increase the parental leave benefit from 14 days to 28 days.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

The protection of a person's right to care for dependants

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

Parental leave is provided to a member who is the primary caregiver and/or supporting partner of the parent of a newborn or newly adopted child. The benefit enables the member to have time off duty to provide care for and bond with the child during their introductory stage in the family unit. This Determination doubles the amount of paid parental leave the member may be granted.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Kirk Marcel Lloyd, Acting Assistant Secretary People Policy and Employment Conditions