



Defence Determination, Conditions of service Amendment (Parental leave) Determination 2021 (No. 12)

I, FIONA LOUISE McSPEERIN, Assistant Secretary, People Policy and Employment Conditions, make the following Determination under section 58B of the *Defence Act 1903*.

Dated 1 July 2021

F L McSPEERIN
Fiona Louise McSpeerin
Assistant Secretary
People Policy and Employment Conditions
Defence People Group

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1 Name

This instrument is the *Defence Determination, Conditions of service Amendment (Parental leave) Determination 2021 (No. 12)*.

2 Commencement

This instrument commences on 8 July 2021.

3 Authority

This instrument is made under section 58B of the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Parental leave amendments

Defence Determination 2016/19, Conditions of service

1 Chapter 5 Part 7 (Parental leave), title

After the title, insert:

Division 1: General provisions

2 Section 5.7.1 (Purpose)

Omit the section, substitute:

5.7.1 Purpose

Parental leave is provided to a member to care for and engage with their child after it has joined their family on a permanent basis.

3 Section 5.7.2 (Member this Part applies to)

Omit the section.

4 Section 5.7.4 (Definitions), definition of parental leave

Omit the entry for *Parental leave*, substitute:

Dual serving parent means a member to whom all of the following apply.

- a. They have a child.
- b. The child's other parent is also a member.

Parental leave means all of the following.

- a. Paid parental leave.
- b. Special paid parental leave.
- c. Unpaid parental leave.

Notes:

1. A member cannot be on more than one type of parental leave at a time.
2. Parental leave is not a type of leave that can be accrued.

5 Section 5.7.4 (Definitions)

After the section, insert:

5.7.4A How to apply for parental leave

A member must apply for parental leave using the approved form.

5.7.4B Limit on the amount of parental leave

1. Subject to subsection 2, the maximum amount of parental leave a member can take is 66 weeks.
2. The maximum amount of parental leave a member can take is reduced by the following.
 - a. Parental leave taken by the member's partner under this Part.
 - b. Maternity leave taken by the member or their partner under Part 6.
 - c. Maternity leave taken by the member's partner under the *Maternity Leave (Commonwealth Employees) Act 1973*.
3. If the member becomes a parent of more than one child as a consequence of any of the following, the member is only eligible for one benefit in respect of those the children.
 - a. A multiple birth.
 - b. The adoption of more than one child at the same time.
 - c. More than one child being placed in the member's or their partner's care under the same permanent care order issued by a court or statutory authority.

5.7.4C Dual serving parents

In relation to a child, dual serving parents are not eligible for more than a combined total of 18 weeks of the following types of leave.

- a. Paid maternity leave.
- b. Paid parental leave.
- c. Special paid parental leave.

5.7.4D Members subject to a flexible service determination

If a member is the subject of a flexible service determination, the following apply.

- a. Leave is only taken on days in the member's pattern of service.
- b. A nonworking period does not break a period of leave.

Division 2: Paid parental leave

5.7.4E Member this Division applies to

This Division applies to a member in the first 66 weeks after one of the following.

- a. The birth of a child of the member.

- b. The adoption of a child by the member.
- c. The child being placed in the member's or their partner's care under a permanent care order issued by a court or statutory authority.

6 Section 5.7.6 (Additional paid parental leave)

Omit the section, substitute:

Division 3: Special paid parental leave

5.7.6 Purpose of special paid parental leave

Special paid parental leave is to provide members with a type of leave in the early days of becoming a parent of a child in circumstances when the other parent is not available to be the primary caregiver of the child during that leave period.

5.7.6A Members this Division applies to

1. This Division applies to a member if all of the following apply.
 - a. The member meets all of the following.
 - i. They are not eligible for paid maternity leave.
 - ii. They will be the primary caregiver of the child for the duration of the special paid parental leave.
 - iii. They have completed their qualifying service.
 - b. The child in relation to whom special paid parental leave will be taken meets all of the following.
 - i. They are a dependant of the member.
 - ii. They have lived with the member for less than 66 weeks.

5.7.6B Members this Division does not apply to

This Division does not apply to a member if the child's other parent is on any of the following types of leave.

- a. Paid parental leave.
- b. Unpaid parental leave.
- c. A type of leave of provided to the member's partner by their employer, however described, for similar purposes.

5.7.6C Special paid parental leave – dual serving parent

1. Subject to subsection 2 and section 5.7.6E, a member who is a dual serving parent is eligible for up to 10 weeks of special paid parental leave.

2. Subsection 1 does not apply if the other parent of the child for whom special paid parental leave will be taken is on maternity leave unless the CDF is satisfied that the child's other parent is not capable of providing care for the child for any of the following reasons.
 - a. Disability or impairment which impacts their ability to provide care for the child.
 - b. Hospitalisation, serious illness or very serious illness.
 - c. The child has been removed by court order from the birth parent's care.

5.7.6D Special paid parental leave – other circumstances

1. Subject to subsection 5.7.6E, a member who is not a dual serving parent is eligible for special paid parental leave if the CDF is satisfied that the other parent, if any, of the child for whom special paid parental leave will be taken is not capable of providing care for the child for any of the following reasons.
 - a. Disability or impairment which impacts their ability to provide care for the child.
 - b. Hospitalisation, serious illness or very serious illness.
 - c. The child has been removed by court order from the birth parent's care.
2. For the purpose of subsection 1, the amount of special paid parental leave for the member is an amount set by CDF that is not more than 10 weeks, having regard to the following.
 - a. The age of the child.
 - b. Any special needs of the child.
 - c. The amount of time the child has been living with the member.
 - d. Any other compelling reasons.

5.7.6E How special paid parental leave must be taken

All the following apply to special paid parental leave.

- a. The leave must be taken within 14 weeks of one of the following.
 - i. The birth of a child of the member.
 - ii. The adoption of a child by the member.
 - iii. The child being placed in the member's or their partner's care under a permanent care order issued by a court or statutory authority.
- b. The leave must be taken in a single continuous period.
- c. The leave may be taken in any combination of full pay or half pay that is not more than the equivalent amount of full-time leave.

5.7.6F Special paid parental leave and effective service

Special paid parental leave counts as effective service.

Division 4: Unpaid parental leave

5.7.6G Member this Division applies to

This Division applies to a member in the first 66 weeks after one of the following.

- a. The birth of a child of the member.
- b. The adoption of a child by the member.
- c. The child being placed in the member's or their partner's care under a permanent care order issued by a court or statutory authority.

7 Subsection 5.7.7.2 (Unpaid parental leave)

After "count as", insert "effective".

8 Section 5.7.8 (Members subject to a flexible service determination)

Omit the section.

9 Section 5.7.9 (Dual serving couples)

Omit the section.

10 Section 5.7.10 (Limit on the amount of parental leave)

Omit the section.

11 Section 5.7.11 (How to apply for parental leave)

Omit the section.

Schedule 2—Savings and transitionals

1. Applications made before 8 July 2021

1. This section applies to an application received before 8 July 2021 for additional paid parental leave under Defence Determination 2016/19, as in force immediately before the commencement of this Determination.
2. A decision made on the application is to be made under Defence Determination 2016/19, Conditions of service, as in force immediately before the commencement of the Determination.

2. Decision made before 8 July 2021

1. This section applies to a person who was approved additional paid parental leave before the commencement of this Determination.
2. Section 5.7.6 of Defence Determination 2016/19, Conditions of service, as in force immediately before the commencement of this Determination applies as though Schedule 1 of this Determination had not commenced.