



DEFENCE DETERMINATION 1994/10

DETERMINATION UNDER THE DEFENCE ACT 1903

I, MERYL ANNETTE STANTON, First Assistant Secretary, Government Authorities and Defence Division, Department of Industrial Relations, acting under a delegation made by the Minister for Industrial Relations under Defence Force Regulation 72A, make the following Determination under section 58B of the Defence Act 1903.

Dated 8 March 1994

M. STANTON
First Assistant Secretary
Government Authorities and Defence Division
Department of Industrial Relations

1. Citation

1.1 This Determination may be cited as Defence Determination 1994/10.

2. Amendment

2.1 Determination 2604, Maternity Leave, as amended¹, is amended as set out in this Determination.

Note

1. Determination 2604 was made by Determination 24 of 1981 and has been amended by Determination Nos. 52 and 55 of 1981; Nos. 3, 4, 13 and 39 of 1982; No. 78 of 1984; No. 20 of 1987; No. 65 of 1988; No. 75 of 1989 and Nos. 32 and 40 of 1993.

3. Clause 3 (Absence from duty in relation to pregnancy)

3.1 Delete the clause, substitute:

"3.1 A member who becomes pregnant is entitled, on notifying the member's Commanding Officer of the pregnancy, to be absent from duty for a period of not more than 52 weeks commencing on the day on which the member is first absent under this clause or clause 5, as the case may be.

"3.2 Absence from duty under this clause is to include a period of absence under clause 5.

"3.3 This clause does not apply to a member who becomes pregnant during a period of leave without pay of more than 6 weeks granted for reasons other than the member's pregnancy."

4. Clause 3A (Absence from duty in relation to pregnancy)

4.1 Delete the clause.

5. Clause 4 (Direction to be absent from duty)

5.1 Delete the clause.

6. Clause 5 (Compulsory period of absence)

6.1 Paragraph 5(a):
Delete the paragraph.

6.2 Paragraph 5(c):
Delete "16 weeks", substitute "6 weeks".

7. Clause 6 (Permission to work for extended period)

7.1 Delete the clause, substitute:

"6. Where a member who is pregnant furnishes to the Chief of the Defence Force -

- (a) not less than 6 weeks before the expected date of birth of the member's child; or
- (b) on or before the date until which the member has been given, or last been given, permission under this clause to continue to perform duty,

a certificate by a duly qualified medical practitioner and, where the Chief of the Defence Force considers it necessary, a certificate by a Service medical officer, certifying that the member will continue to be fit for duty until a specified date, the Chief of the Defence Force may give the member permission, in writing, to continue to perform duty until the expiration of that date."

8. Clause 7 (Early return to duty)

8.1 Delete the clause, substitute:

"7. Where, before the expiration of the period of 6 weeks commencing on the date of a member's confinement, the member furnishes to the Chief of the Defence Force a certificate by a duly qualified medical practitioner certifying that the member will be fit to resume duty on a specified date occurring before the expiration of that period, the Chief of the Defence

Force may give the member permission, in writing, to resume duty on that date."

9. Clause 8 (Election to take recreation leave or long service leave)

9.1 Delete "under clause 3 or 5", substitute "under this Determination".

10. Clause 9 (Salary payable to member absent from duty under this Determination)

10.1 Delete "paragraph 3(a)", substitute "clause 3".

EXPLANATORY MEMORANDUM

DEFENCE DETERMINATION 1994/10

Defence Act 1903

Determination 2604, Maternity Leave (the Principal Determination), provides for the grant of Maternity Leave to members of the Australian Defence Force (ADF).

The purpose of this Determination is to align the conditions on which ADF maternity leave is granted more closely with the conditions on which maternity leave is granted to Commonwealth employees generally under the *Maternity Leave (Commonwealth Employees) Act 1973* ('the Act').

Clause 3 of this Determination amends a provision of the Principal Determination dealing with absence from duty in relation to pregnancy. The amendment restructures the provision and deletes an entitlement to be absent from duty for up to 6 weeks after a termination occurring not later than 20 weeks before the expected date of birth. Such an entitlement is not provided in the Act and can be provided for ADF members under normal procedures on fitness for duty.

Clause 4 repeals a related provision which nullified the entitlement to up to 6 weeks' absence following early termination of pregnancy if the member was not absent owing to the pregnancy at the date of termination.

Clause 5 repeals a provision which authorised the Chief of the Defence Force, on medical advice, to direct a pregnant member to be absent from duty. Such a provision is not included in the Act.

Clause 6 amends a provision dealing with the compulsory period of absence, by:

- . deleting a paragraph which relied on the repealed clause 4; and
- . changing the start of the compulsory period from 16 weeks to 6 weeks before the expected date of birth, as provided for in the Act.

Clause 7 repeals a provision authorising the Chief of the Defence Force to allow a member to perform duty for a period up to 6 weeks before the expected date of birth, and substitutes a revised provision modelled on the equivalent section of the Act. Under the revised provision, a member may be allowed (with proper medical certification) to serve up to the date of confinement.

Clause 8 repeals a provision permitting early return to duty following confinement, and substitutes a revised provision modelled on the equivalent section of the Act.

Clauses 9 and 10 make minor consequential amendments.

Authority: Section 58B of the
Defence Act 1903