

# Maternity Leave (Australian Government Employees) Act 1973

No. 72 of 1973

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## AN ACT

To make provision for Maternity Leave in respect of Employees of the Australian Government and certain other Persons, and for other purposes.

[Assented to 18 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

- Short title.** 1. This Act may be cited as the *Maternity Leave (Australian Government Employees) Act 1973*.
- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definitions.** 3. In this Act, unless the contrary intention appears—  
“confinement”, in relation to a female employee who has become pregnant, means the birth of a child, or other termination of the pregnancy, that occurs not earlier than twenty weeks before the expected date of birth of the child, and “confined” has a corresponding meaning;  
“employee” means a person to and in relation to whom this Act applies by virtue of section 5;

“leave officer”, in relation to an employee, means a person who may, whether in his own right or as a delegate of another person, grant leave to that employee on account of illness;

“prescribed authority” means a body corporate (not being an incorporated company, society, or association) that is incorporated for a public purpose by a law of the Commonwealth or of a Territory and is declared by the regulations to be a body corporate in relation to which this Act applies.

4. This Act applies within and outside Australia and extends to all the Territories. Application of Act.

5. (1) Subject to this section, this Act applies to and in relation to— Persons in relation to whom Act applies.  
(a) a person who is employed by the Commonwealth under the *Public Service Act 1922–1973* or the *Commonwealth Teaching Service Act 1972*; and

(b) such other persons employed by the Commonwealth, and such persons employed by a prescribed authority, whether so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship, as are prescribed.

(2) Without limiting by implication the generality of sub-section (1), but subject to sub-section (3)—

(a) a Commonwealth Police Officer or a member of the Police Force of a Territory forming part of Australia;

(b) a person who is the holder of an office that is established by a law of the Commonwealth or of a Territory; and

(c) a person who constitutes, or is a member of, a prescribed authority,

shall, for the purposes of this Act, be deemed to be employed by the Commonwealth.

(3) This Act does not apply to or in relation to—

(a) a member of the Parliament or a Minister of State;

(b) a person who is a Judge as defined by section 4 of the *Judges' Pensions Act 1968*;

(c) a member of the Defence Force;

(d) persons appointed or engaged for employment outside Australia only;

(e) a person who is not entitled, as a condition of his employment, to leave of absence, with pay, on account of illness; or

(f) a person remunerated by fees, allowances or commission only.

Absence  
from duty  
in relation  
to child-  
birth.

6. (1) A female employee who has become pregnant (whether before or after the commencement of this Act or before or after being employed by the Commonwealth or a prescribed authority)—

(a) shall, on application, be granted by the leave officer permission to be absent from duty for a period not exceeding fifty-two weeks, being a period commencing not earlier than twenty weeks before the expected date of her confinement and not later than the day immediately following the expiration of the period referred to in paragraph (b) and ending not earlier than the last day in that last-mentioned period and not later than the expiration of the period of fifty-two weeks commencing on the first day in the period referred to in paragraph (b); and

(b) shall, whether or not she has been granted permission under paragraph (a), absent herself from duty during a period that—

(i) if she is still pregnant six weeks before the expected date of birth of her child—commences six weeks before the expected date of birth of her child and continues until the expiration of a period of six weeks commencing on the date of her confinement; or

(ii) if she is confined earlier than six weeks before the expected date of birth of her child—commences on the date of her confinement and continues for six weeks.

(2) Where the pregnancy of a female employee terminates other than by way of a confinement—

(a) she shall not, after that termination, be granted permission to be absent from duty in accordance with this section in respect of that pregnancy; and

(b) if, before that termination, she has been granted permission to be absent from duty in accordance with this section, that grant shall be cancelled.

(3) An employee who has made an application under paragraph (1)

(a) may, at any time before she commences a period of absence, or while she is absent, from duty in accordance with this section, amend the application so as to extend or reduce the period referred to in the application, but so that the amended period complies with the requirements of that paragraph, and the leave officer shall vary his permission in accordance with the application as so amended.

(4) An employee who has been confined and who was absent from duty in accordance with this section for a period that consists of, or includes—

(a) where the confinement occurred on or after the expected date of birth of the child—a period that commenced six weeks before the expected date of birth of the child and continues until the expiration of a period of six weeks commencing on the date of the confinement; or

- (b) in any other case—a period that commenced on or after the day six weeks before, and not later than, the date of the confinement and continues for not more than twelve weeks,

is entitled to pay for the period referred to in paragraph (a) or (b), as the case may be.

(5) Where, under sub-section (4), an employee is entitled to pay in respect of a period, the pay that the employee is to receive shall be the pay, salary, wage or other payment that the employee would have received if, for that period, she had been granted leave of absence on full pay on account of illness.

(6) For the purposes of any provision of an Act or of a determination or order in force at any time under an Act, being a provision relating to leave on account of illness, absence of a female employee from duty at any time at which she is permitted to be absent in accordance with paragraph (1) (a) shall be deemed to be absence on account of illness.

(7) Where—

- (a) an employee has, under paragraph (1) (a), been granted permission to be absent from duty for a period; and
- (b) the employee applies for leave of absence of any kind with pay in respect of the whole or any part of that period, excluding a period in respect of which pay is payable under sub-section (4),

that application shall, if the employee is eligible for the leave to which the application relates, be granted.

(8) The grant of leave of absence of any kind with pay in respect of a period in respect of which pay is payable under sub-section (4) is of no effect.

(9) This section does not relate to absence from duty before the commencement of this Act.

7. (1) Subject to sub-section (2), a period during which an employee is absent from duty in accordance with section 6 is to form part of her period of service or employment for all purposes.

*Effect of maternity leave on period of service.*

(2) Where a period during which an employee is absent from duty in accordance with section 6 exceeds twenty-six weeks, any part of that period after the first twenty-six weeks that is a period of absence without pay does not form part of her period of employment for the purpose of calculating her entitlement to recreation leave or recreation leave credit.

8. (1) Notwithstanding anything in the *Public Service Act 1922–1973*, where—

*Officers of the Public Service on maternity leave.*

- (a) a woman who occupies an office in a Department of the Public Service of the Commonwealth is absent from duty in accordance with section 6; and

(b) that absence is after her confinement and is without pay, the Board may declare that that office is vacant and, thereupon, the woman becomes an unattached officer for the purposes of that Act.

(2) Where a woman who has become an unattached officer under sub-section (1) returns to duty on completion of her period of absence in accordance with section 6, she shall be appointed—

- (a) if the office occupied by her immediately before she so became an unattached officer is vacant—to that office; or
- (b) in any other case—to another office that, in status and salary, is as near as possible to the office referred to in paragraph (a).

(3) In this section, “the Board” has the same meaning as in the *Public Service Act 1922–1973*.

Temporary employees on maternity leave.

9. (1) Notwithstanding anything in any other law, where a woman employed in a temporary capacity is absent from duty in accordance with section 6, her employment shall not terminate, or be terminated, while she is so absent.

(2) Where—

- (a) on the return to duty with an authority (including the Commonwealth) of a woman referred to in sub-section (1), her employment terminates or is terminated or notice of the termination of her employment is given to her; and
- (b) the woman thereupon applies to that authority for employment in a temporary capacity,

that authority shall give to the woman preference over all other persons (other than other women to whom this sub-section applies) for employment on work for which she is qualified.

No discrimination by reason of pregnancy.

10. (1) The possible or actual pregnancy of a woman is not a ground on which the Commonwealth or a prescribed authority may refuse employment to that woman.

(2) The possible or actual pregnancy of a female employee is not a ground for the dismissal of that employee or for action disadvantageous to that employee in her employment.

Leave for male employees.

11. (1) Subject to this section, where a male employee makes application to the leave officer for permission to be absent from duty, for a period not exceeding one week, for the purpose of caring for a woman, or the child of a woman, who—

- (a) at the time of the commencement of the period of absence specified in the application, expects to be confined within one week; or
- (b) has been confined not earlier than five weeks before that time, the leave officer shall grant the application.

(2) An employee is not entitled to be granted permission under this section to be absent from duty unless he is the father of, or has, or has taken, responsibility for the care and maintenance of the child born, or to be born, of the woman concerned.

(3) An employee is not entitled to be granted permission under this section to be absent from duty, in respect of a particular confinement, for a period of, or for periods that amount in the aggregate to, more than one week.

(4) An employee is entitled to pay in respect of a period of absence from duty in accordance with this section.

(5) Where, under sub-section (4), an employee is entitled to pay in respect of a period, the pay that the employee is to receive shall be the pay, salary, wage or other payment that the employee would have received in respect of that period if he had continued on duty during that period.

(6) A period during which an employee is absent from duty in accordance with this section is to form part of his period of service or employment for all purposes.

(7) This section does not relate to absence from duty before the commencement of this Act.

(8) This section does not prevent the grant of leave under any other law.

12. (1) In this section—

“employee” includes a person who would, if this Act had commenced on 1st January, 1973, have been an employee during the whole or a part of the relevant period but who ceased to be employed by the Commonwealth or a prescribed authority before the commencement of this Act;

Absence  
from duty  
during  
relevant  
period.

“relevant period” means the period that commenced on 1st January, 1973, and ended on the day immediately before the commencement of this Act.

(2) A reference in this section to absence from duty on leave shall be read as including a reference to absence from duty with the permission or consent of the relevant authority or in accordance with law.

(3) Where—

(a) a female employee who has been pregnant and who was confined before the commencement of this Act was, by reason of her pregnancy or confinement, absent from duty on leave for a period; and

(b) that period of absence occurred both during the relevant period and during—

(i) where the confinement occurred on or after the expected date of birth of the child—the period that commenced six weeks before the expected date of birth of the child and continued until the expiration of a period of six weeks commencing on the date of the confinement; or

- (ii) in any other case—a period that commenced on or after the day six weeks before, and not later than, the date of the confinement and continued for not more than twelve weeks,

she is entitled—

- (c) if that period of absence was without pay—to pay in respect of that period; or
- (d) in any other case—to be credited with leave of the same kind and amount as the leave taken during that period.

(4) Where—

- (a) a female employee who is pregnant at the commencement of this Act was, by reason of her pregnancy, absent from duty on leave for a period; and
- (b) that period of absence occurred during the relevant period and after the date six weeks before the expected date of birth of her child or the date of her confinement, whichever is the earlier date,

she is entitled—

- (c) if that period of absence was without pay—to pay in respect of that period; or
- (d) in any other case—to be credited with leave of the same kind and amount as the leave taken during that period.

(5) A female employee who is, or was, confined before the expected date of the birth of her child is not entitled under sub-section (3) or (4) to be paid or credited with respect to a period of absence if the result of the payment or credit would be that the employee would receive under sub-section (3) or (4) of this section and under sub-section 6 (4) pay or credit, or pay and credit, with respect to periods of absence in respect of a particular confinement that amount in the aggregate to more than twelve weeks.

(6) Where, under sub-section (3) or (4), an employee is entitled to pay in respect of a period, the pay that the employee is to receive shall be the pay, salary, wage or other payment that the employee would have received if, for that period, she had been granted leave of absence on full pay on account of illness.

(7) Where a male employee has, during the relevant period, been absent from duty on leave for a period for the purpose of caring for a woman, or the child of a woman, who—

- (a) at the time of the commencement of that absence expected to be confined within one week; or
  - (b) had been confined not earlier than five weeks before that time,
- the male employee is, subject to sub-sections (8) and (9), entitled—
- (c) if that period of absence was without pay—to pay in respect of that period; or

(d) in any other case—to be credited with leave of the same kind and amount as the leave taken during that period.

(8) A male employee is not entitled under sub-section (7) to be paid or credited with respect to a period of absence unless he is the father of, or has, or has taken, responsibility for the care and maintenance of the child born, or to be born, of the woman concerned.

(9) A male employee is not entitled under sub-section (7) to be paid or credited with respect to a period of absence if the result of the payment or crediting would be that the employee would receive under this Act pay or credit, or pay and credit, with respect to periods of absence in respect of a particular confinement that amount in the aggregate to more than one week.

(10) Where, under sub-section (7), an employee is entitled to pay in respect of a period, the pay that the employee is to receive shall be the pay, salary, wage or other payment that the employee would have received in respect of that period if he had continued on duty during that period.

(11) Where a person who is entitled to be credited under this section with recreation leave, long service leave or furlough ceased to be employed by the Commonwealth or a prescribed authority before the commencement of this Act, that person shall be paid an amount in lieu of that leave or furlough at a rate of pay equal to the rate of pay that would have been applicable if the person had been paid in lieu of that leave or furlough when he ceased to be so employed.

13. A female employee who was, immediately before the commencement of this Act, absent from duty (either on leave, with the permission or consent of the relevant authority or in accordance with law) by reason of pregnancy or confinement shall, for the purposes of this Act, be deemed to be absent from duty in accordance with permission granted under paragraph 6 (1) (a) and—

Female employees absent from duty immediately before commencement of this Act.

(a) if, before the commencement of this Act, she had made an application for permission or consent to be so absent—that application shall, in so far as it relates to a period after the commencement of this Act, be deemed to have been made under paragraph 6 (1) (a); or

(b) in any other case—that employee shall be deemed to have made an application under paragraph 6 (1) (a) with respect to her period of absence after the commencement of this Act.

14. (1) Where, during the relevant period, a woman—

(a) was employed by the Commonwealth or a prescribed authority;

(b) was absent from duty on leave by reason of her pregnancy or confinement; and

Certain female employees to be deemed not to have resigned.



(c) resigned without returning to duty,  
this Act applies in relation to that woman, with respect to that pregnancy or confinement, as if she had not resigned but had continued to be absent from duty on leave by reason of her pregnancy or confinement.

(2) In this section, “ relevant period ” has the same meaning as in section 12, and a reference to absence from duty on leave shall be read as a reference to absence from duty with the permission or consent of the relevant authority or in accordance with law.

**Regulations.** 15. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.