

MATERNITY LEAVE (AUSTRALIAN GOVERNMENT EMPLOYEES) AMENDMENT ACT 1978

No. 168 of 1978

An Act to amend the *Maternity Leave (Australian Government Employees) Act 1973*.

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

1. (1) This Act may be cited as the *Maternity Leave (Australian Government Employees) Amendment Act 1978*.¹ Short title, &c.

(2) The *Maternity Leave (Australian Government Employees) Act 1973*² is in this Act referred to as the Principal Act.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹ Commencement

(2) Sub-section 7 (2) shall come into operation on the date fixed by Proclamation under sub-section 2 (2) of the *Public Service Amendment Act 1978*.

3. The title of the Principal Act is amended by omitting "Australian Government" and substituting "Commonwealth". Title

4. Section 1 of the Principal Act is repealed and the following section substituted:

"1. This Act may be cited as the *Maternity Leave (Commonwealth Employees) Act 1973*."¹ Short title

5. (1) Section 3 of the Principal Act is amended—

(a) by omitting the definition of "prescribed authority" and substituting the following definitions:

" 'medical practitioner' means a person registered or licenced as a medical practitioner under a law of a State or Territory that provides for the registration or licencing of medical practitioners;

" 'prescribed authority' means a body corporate (not being an incorporated company, society or association), or an unincorporated body, that is established for a public purpose by a law of the Commonwealth or of a Territory other than the Northern Territory and is declared by the

Interpretation

regulations to be a body corporate, or an unincorporated body, as the case requires, in relation to which this Act applies.”; and

(b) by adding at the end thereof the following sub-sections:

“(2) In this Act, a reference to an unauthorized absence, in relation to an employee or in relation to employees included in a class of employees, shall be read as a reference to an absence that is, under the regulations, an unauthorized absence in relation to that employee or to that class of employees.

“(3) In reckoning, for the purposes of this Act, the number of business days contained in any period relevant to the making of, or dealing with, an application under section 7A by a female employee for permission to resume duty, Saturdays and Sundays and any other days that are public holidays in the place where she would, but for being absent on leave, perform her duties or are public holidays for a class of persons in which she is included shall not be counted as business days, but all other days shall be so counted.”.

(2) Regulations in force immediately before the day on which this Act receives the Royal Assent for the purposes of the definition of “prescribed authority” in section 3 of the Principal Act continue in force on and after that day as if made for the purposes of the definition of “prescribed authority” in sub-section 3(1) of the Principal Act as amended by this Act.

Persons in
relation to
whom Act
applies

6. Section 5 of the Principal Act is amended—

(a) by inserting in paragraph (b) of sub-section (1) “(other than the Northern Territory)” after “Territory”;

(b) by omitting paragraph (a) of sub-section (2) and substituting the following paragraph:

“(a) a Commonwealth Police Officer or a member of the Police Force of the Australian Capital Territory;”;

(c) by inserting in paragraph (b) of sub-section (2) “(other than the Northern Territory)” after “Territory”.

Absence
from duty in
relation to
childbirth

7. (1) Section 6 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) A female employee who has become pregnant (whether before or after being employed by the Commonwealth or a prescribed authority)—

(a) shall, on application made to a leave officer before she is confined, be granted by the leave officer permission to absent herself from duty during a period not exceeding 52 weeks commencing on the date of commencement of

the period during which she is required, in accordance with paragraph (b), to absent herself from duty;

- (b) shall, subject to section 7, 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 6 weeks before the expected date of birth of her child—commences 6 weeks before the expected date of birth of her child and continues until the expiration of a period of 6 weeks commencing on the date of her confinement; or
 - (ii) if she is confined earlier than 6 weeks before the expected date of birth of her child—commences on the date of her confinement and continues for 6 weeks; and
- (c) shall, on application made to a leave officer—
- (i) while she is, or after she has been, absent from duty in accordance with permission granted under paragraph (a) or under this paragraph; or
 - (ii) if no such permission has been granted—while she is, or after she has been, absent from duty in pursuance of paragraph (b),

be granted by the leave officer permission to absent herself from duty during a further period ending on or before the expiration of a period of 52 weeks commencing on the date of commencement of the period during which she is or was required, in accordance with paragraph (b), to absent herself from duty.”;

- (b) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) Subject to sub-sections (4), (4C) and (4F), an employee who has been confined and who has been absent from duty for a period or periods in accordance with this section is entitled to pay—

- (a) in a case where the period of absence, or the sum of the periods of absence, exceeds 12 weeks—for the first 12 weeks of that absence; and
- (b) in any other case—for the whole of that absence.

“(4) An employee is not entitled, under sub-section (3), to pay in respect of any absence that occurs before the day on which the continuous period, or the last continuous period, during which she is, by virtue of sub-section (4A), to be taken to be a person to whom this sub-section applies first exceeds 12 months.

“(4A) A person shall be taken to be a person to whom sub-section (4) applies by virtue of this sub-section—

- (a) while she is a person to and in relation to whom this Act applies; or
- (b) while she is employed by a body corporate (not being an incorporated company, society or association), or an unincorporated body, established for a public purpose by a law of the Commonwealth or of a Territory other than the Northern Territory but is not a person to and in relation to whom this Act applies.

“(4B) A person shall not be taken to be a person to whom sub-section (4) applies by virtue of sub-section (4A) during any period during which, by virtue of sub-section 5 (3), this Act does not apply to or in relation to her.

“(4C) Where an employee is absent from duty on unauthorized absence immediately before the commencement of the period during which, but for the operation of paragraph (a) of this sub-section, the employee would be required by paragraph (1) (b) to absent herself from duty in connection with her expected confinement, or with her confinement, as the case may be, unless the Board determines that the unauthorized absence occurs in extenuating circumstances—

- (a) the other provisions of this Act do not apply to her in connection with her expected confinement, or with her confinement, as the case may be;
- (b) she shall absent herself from duty during that first-mentioned period, but, subject to sub-section (4D), is not entitled to pay in respect of the period while she is so absent; and
- (c) if, upon the expiration of that first-mentioned period, she remains absent from duty on unauthorized absence, her unauthorized absence before the commencement of that period shall be deemed to be continuous with her unauthorized absence after the expiration of that period.

“(4D) Sub-section (4C) does not affect an employee’s entitlement to pay for any period of long service leave or leave of absence for recreation or on account of illness that is granted to her.

“(4E) Where a female employee who is granted leave of absence without pay has become pregnant before, or becomes pregnant after, the commencement of that leave, her absence from duty in accordance with the grant during any part of the period of 52 weeks commencing 6 weeks before the expected birth of her child or, if she is confined earlier than 6 weeks before the expected birth of her child, commencing on the date of

her confinement, shall be deemed, for the purposes of paragraph (1) (c) and sub-section (3), to be absence from duty in accordance with permission granted under paragraph (1) (a).

“(4F) Notwithstanding sub-section (4E), where a female employee who is granted leave of absence from her employment without pay for a period (in this sub-section referred to as ‘the relevant period’), being a period exceeding 6 weeks, has become pregnant before, or becomes pregnant after, the commencement of that leave, unless the Board otherwise determines—

- (a) sub-section (1) does not authorize a leave officer to grant her permission to absent herself from duty under this Act at any time while she is absent from duty in accordance with that grant; and
- (b) she is not entitled to pay under sub-section (3) in respect of that employment for any part of the relevant period.

“(4G) Sub-section (4F) applies to and in relation to an employee who has been granted leave of absence without pay for a period whether or not she ceases to be absent from duty on leave without pay before the expiration of that period, but does not apply to such an employee unless she is absent on leave without pay in accordance with the grant for a continuous period exceeding 6 weeks.”;

- (c) by omitting from sub-section (5) “sub-section (4)” and substituting “sub-section (3)”;
- (d) by omitting sub-section (6);
- (e) by inserting in paragraph (a) of sub-section (7) “or (1) (c)” after “paragraph (1) (a)”;
- (f) by omitting from paragraph (b) of sub-section (7) “sub-section (4)” and substituting “sub-section (3)”;
- (g) by omitting from sub-section (8) “sub-section (4)” and substituting “sub-section (3)”.

(2) Section 6 of the Principal Act is further amended—

- (a) by inserting in sub-section (4) “or (4AB)” after “sub-section (4A)”;
- (b) by inserting after sub-section (4A) the following sub-section:

“(4AB) A person (other than a person who is to be taken to be a person to whom sub-section (4) applies by virtue of sub-section (4A)) shall be taken to be a person to whom sub-section (4) applies by virtue of this sub-section—

- (a) while she is employed in eligible Commonwealth employment within the meaning of Part IV of the *Public Service Act 1922*; and

- (b) while she is employed in eligible public employment within the meaning of Part IV of the *Public Service Act* 1922 (other than eligible Commonwealth employment within the meaning of that Part) and is a person to whom Division 2 or Division 3 of that Act applies.”; and
- (c) by inserting in sub-section (4B) “ or (4AB)” after “sub-section (4A)”.

8. Section 7 of the Principal Act is repealed and the following sections are substituted:

Employee
may
continue to
perform, or
resume, duty
in certain
circum-
stances

“7. (1) Where a female employee who is pregnant furnishes to the leave officer—

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

a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will continue to be fit for duty until a specified date, the leave officer may give her permission, in writing, to continue to perform duty until and including that date.

“(2) Where permission is given under sub-section (1) for a female employee to continue to perform duty until and including a date specified in the permission—

- (a) if she is confined more than 6 weeks before the expected date of birth of her child—the grant of permission so to perform duty is of no effect;
- (b) if she is confined before the date so specified but not more than 6 weeks before the expected date of birth of her child—sub-paragraph 6 (1) (b) (i) has effect as if the period referred to in that sub-paragraph commenced on the date of her confinement; or
- (c) in any other case—sub-paragraph 6 (1) (b) (i) has effect as if the period referred to in that sub-paragraph commenced on the day next following the date so specified.

“(3) Where, before the expiration of the period during which a female employee who has been confined would, but for this sub-section, be required to absent herself from duty, the employee furnishes to the leave officer a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will be fit to resume duty on a specified date occurring before the expiration of that period, the leave officer may give her permission, in writing, to resume duty on that date and the period during which she shall, upon permission being so

given, be required by paragraph 6 (1) (b) to absent herself from duty terminates immediately before that date.

“7A. (1) A female employee who absents herself from duty in accordance with a permission granted under paragraph 6 (1) (a) or 6 (1) (c) may, at any time after the expiration of the period during which she is required in accordance with paragraph 6 (1) (b), to absent herself from duty, make application, in writing, to the leave officer for permission to resume duty on a day specified in the application. Other applications to resume duty

“(2) Where application is made to the leave officer under sub-section (1), the leave officer shall, within 7 business days after receipt of the application—

- (a) subject to sub-sections (3) and (6), grant or refuse to grant the application; and
- (b) inform the applicant, in writing, whether he has granted or refused to grant the application.

“(3) A leave officer shall not grant an application made to him under sub-section (1) to resume duty on a day that is less than 7 days after the application is received by him unless he is satisfied that there are special circumstances justifying his granting the application.

“(4) Where a leave officer refuses to grant an application for permission to resume duty made under sub-section (1) and the application was received by the leave officer not less than 21 business days before the date on which the applicant wished to resume duty—

- (a) the leave officer shall furnish to the applicant, when informing the applicant that he has refused to grant the application, particulars of the grounds on which it would not, in his opinion, be in the interests of the Service for her to resume duty on that date; and
- (b) the applicant may, within 7 business days after she has received the particulars referred to in paragraph (a), request the Public Service Board, in writing, to review the decision of the leave officer and furnish, with her request, particulars of any matters that she wishes the Board to consider in making the review.

“(5) Where the Public Service Board receives a request under sub-section (4), the Board shall, within 7 business days after it receives the request—

- (a) subject to sub-section (6)—
 - (i) affirm the decision of the leave officer; or
 - (ii) quash the decision of the leave officer and grant the applicant the permission sought in her application; and
- (b) inform the applicant, in writing, of its decision.

“(6) An application under sub-section (1) shall be granted by the leave officer to whom the application is made, or by the Public Service Board in reviewing a refusal by the leave officer to grant the application, unless the leave officer or the Board, as the case may be, is satisfied that it would not be in the interests of the Service to grant the application.

“(7) Where an applicant is granted, under this section, permission to resume duty before the expiration of a period in respect of which she had been granted permission to absent herself from duty, that period shall be treated as having expired immediately before the date upon which she resumes duty.

Grant of
maternity
leave not to
affect
continuity of
service

“7B. (1) Where an employee is, in accordance with section 6, absent from duty for a period—

- (a) if she has been paid, whether under sub-section 6 (3) or otherwise, in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has been so paid forms part of her period of service or employment for all purposes of this Act, of any other Act and of any Ordinance; and
- (b) subject to sub-section (2), if she has not been so paid in respect of the period or of a part of the period—the period, or the part of the period, of absence for which she has not been so paid does not form part of her period of service or employment for the purposes of this Act, or of any other Act or of any Ordinance, but shall not be taken to have broken the continuity of her service or employment.

“(2) Where an employee who is, in accordance with section 6, absent from duty for a period in relation to her expected confinement or her confinement had not, immediately before the commencement of that period, been an employee for a continuous period of 12 months, the period of the absence or the period comprising the first 12 weeks of the period of the absence, whichever is the less, forms part of her period of service or employment for all purposes of this Act, of any other Act and of any Ordinance.”.

Officers of
the Public
Service on
maternity
leave

9. Section 8 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) Notwithstanding sub-section (2), where a woman who has become an unattached officer under sub-section (1), returns to duty before the expiration of the period of 52 weeks commencing on the date of commencement of the period during which, in accordance with paragraph 6 (1) (b), she has been required to absent herself from duty, the Board is not required to comply with the provisions of that sub-section until that first-mentioned period has expired.”.

10. Sections 11, 12, 13 and 14 of the Principal Act are repealed and the following section is substituted:

“11. (1) The Public Service Board may, either generally or as otherwise provided by the instrument of delegation, by instrument under the hands of the members, or a majority of the members, of the Board, delegate to— Delegation
by Public
Service
Board

- (a) a member of the Board;
- (b) an officer of the Australian Public Service or a person employed under the *Public Service Act 1922*;
- (c) an officer or employee of the Commonwealth Teaching Service;
- (d) a prescribed authority, a member of such an authority or a person who is employed by such an authority;
- (e) a Commonwealth Police Officer or a member of the Police Force of the Australian Capital Territory; or
- (f) a person who is the holder of an office that is established by a law of the Commonwealth or of a Territory (other than the Northern Territory), being an office that is declared by the regulations to be an office to which this sub-section applies,

any of its powers under this Act or the regulations, other than this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Public Service Board.

“(3) A delegation under this section does not prevent the exercise of a power by the Public Service Board.”

11. (1) Where—

Transitional

- (a) a person has, before the commencing day, been given permission under section 6 of the Principal Act to be absent from duty, in connection with her expected confinement or her confinement, for a period commencing on or after, or extending after, that day; or
- (b) a person other than a person referred to in paragraph (a) is, on the commencing day, absent from duty in connection with her expected confinement or her confinement, in pursuance of paragraph 6 (1) (b) of the Principal Act,

the amendments of the Principal Act made by sections 5, 6, 7, 8 and 9 of this Act do not apply to or in relation to her in connection with her expected confinement or her confinement.

(2) A prescribed employee may, on or after the commencing day and before 1 January 1979, make application—

- (a) under section 6 of the Principal Act as if the amendments of that Act made by sections 5, 6, 7, 8 and 9 of this Act had not been made; or
 - (b) under section 6 of the Principal Act as amended by this Act, for permission to be absent from duty, in connection with her expected confinement or her confinement, and, if she does so under section 6 of the Principal Act, the amendments of the Principal Act specified in paragraph (a) do not apply to or in relation to her in connection with her expected confinement or her confinement.
- (3) Notwithstanding sub-sections (1) and (2)—
- (a) a prescribed employee shall, upon application made to a leave officer after she has been absent from duty—
 - (i) in accordance with a permission previously granted under paragraph 6 (1) (a) of the Principal Act or under this paragraph; or
 - (ii) if no such permission has been granted—in pursuance of paragraph 6 (1) (b) of the Principal Act, be granted by the leave officer permission to absent herself from duty during a further period ending on or before the expiration of a period of 52 weeks commencing on the day on which she commenced or first commenced a period of absence from duty in accordance with section 6 of the Principal Act;
 - (b) where, before the expiration of the period during which a prescribed employee who has been confined would, but for this sub-section, be required to absent herself from duty in accordance with paragraph 6 (1) (b) of the Principal Act, the employee furnishes to the leave officer a certificate given by a medical practitioner certifying that, in the opinion of the medical practitioner, she will be fit to resume duty at the expiration of that period, the leave officer may give her permission, to resume duty on that day and the period during which she shall, upon permission being so given, be required by paragraph 6 (1) (b) of the Principal Act to absent herself from duty terminates immediately before that day; and
 - (c) section 7A of the Principal Act as amended by this Act applies to a prescribed employee in relation to any period during which she absents herself from duty in accordance with a permission granted to her under the Principal Act or under paragraph (a) of this sub-section as if—
 - (i) any period during which she so absents herself in accordance with a permission granted under the Principal Act were a period during which she had so absented herself in accordance with a permission granted under paragraph 6 (1) (a) of the Principal Act as amended by this Act;

- (ii) any period during which she so absents herself in accordance with a permission granted to her under paragraph (a) of this sub-section were a period during which she had so absented herself in accordance with a permission granted under paragraph 6 (1) (c) of the Principal Act as amended by this Act; and
- (iii) any period during which she is required, in accordance with paragraph 6 (1) (b) of the Principal Act, so to absent herself were a period during which she was required so to absent herself under paragraph 6 (1) (b) of the Principal Act as amended by this Act.

(4) Where a person has, before the commencing day, been given permission, under section 11 of the Principal Act, to be absent from duty for a period commencing on or after, or extending after, that date—

- (a) the repeal of that section made by section 10 of this Act does not affect that grant of permission to be absent from duty; and
- (b) section 11 of the Principal Act continues to apply to him, in relation to his absence from duty in accordance with that permission, as if it had not been repealed.

(5) A prescribed employee may, on or after the commencing day and before 1 January 1979, make application under section 11 of the Principal Act for permission to be absent from duty as if the amendment of that Act made by section 10 of this Act had not been made and, if he does so, that amendment does not apply to or in relation to him in connection with that application.

(6) In this section—

“commencing day” means the day on which this Act receives the Royal Assent;

“prescribed employee” means a person—

- (a) who is an employee within the meaning of the *Maternity Leave (Commonwealth Employees) Act 1973*;
- (b) who was such an employee immediately before the commencing day; and
- (c) who has been such an employee continuously since that day.

NOTES

1. Act No. 168, 1978; assented to 28 November 1978.
2. Act No. 72, 1973, as amended. For previous amendments see Act No. 37, 1976.