



*Defence Act 1903*

## **Defence Determination 1998/7**

I, NICHOLAS JEFFERSON FORD, Director General Financial Conditions, Defence Personnel Executive, Department of Defence, acting under a delegation made by the Minister for Workplace Relations and Small Business under regulation 72A of the Defence Force Regulations, make the following Determination under section 58B of the *Defence Act 1903*.

Dated 1 March 1998

N. J. FORD  
Air Commodore  
Director General Financial Conditions  
Defence Personnel Executive  
Department of Defence

## **1. Citation**

1.1 This Determination may be cited as Defence Determination 1998/7.

[NOTE: This Determination commences on the day on which it is made: see *Defence Act 1903*, subsection 58B(4).]

## **2. Purpose**

2.1 The purpose of this Determination is to provide for the retention of qualified and experienced Observers.

## **3. Definitions**

3.1 In this Determination:

“effective service” means continuous full-time service as an Observer for which salary is payable, excluding any period of:

- (a) any form of leave without pay exceeding 21 days;
- (b) absence without leave;
- (c) service rendered in discharging a return of service obligation;
- (d) a period of prospective service;
- (e) suspension from duty without pay; and
- (f) imprisonment or detention;

“Observer” means an Aircrew Observer in the Navy;

“offer”, in relation to an eligible member, means an offer in writing to the member which:

- (a) offers a completion bonus of the amount and on the conditions specified in clause 7;
- (b) sets out the required period of service stipulated by the CDF in relation to the member; and
- (c) is acknowledged in writing by the member;

“period of prospective service”, in relation to an eligible member, means a period of service ending on the day specified in an undertaking given by the member under subsection 33(3) of the *Military Superannuation and Benefits Act 1991* when the member elects to receive a retention benefit under Part 8 of that Act;

“prescribed amount” means the amount prescribed in clause 6;

“relevant day”, in relation to an eligible member, means the day on which the member acknowledges an offer;

“required period of service”, in relation to an eligible member, means a period specified in column 1 of the Schedule, being a period of effective service as an Observer that:

- (a) begins on the relevant day; and
- (b) is stipulated in the offer acknowledged by the member on that day;

“the CDF” means the Chief of the Defence Force.

[NOTE: Defence Determination 1991/45 contains definitions of other terms that may apply to this Determination.]

#### **4. Return of service obligation**

4.1 For the purposes of this Determination, an eligible member is subject to a return of service obligation if:

- (a) the member:
  - (i) is engaged in, or has completed, a course of training, a period of employment on special duties or a period of service outside Australia (excluding a course of aviation training or a period of aviation service outside Australia, if the course or period begins after the relevant day); or
  - (ii) was appointed outside Australia and the member’s transport, or the member’s family’s transport, to Australia was at the expense of the Commonwealth; and
- (b) because of the member’s being, or having been, engaged as described in subparagraph 4.1(a)(i), or having been appointed outside Australia as described in subparagraph 4.1(a)(ii), the member is required to complete a period of service determined by the Chief of Navy, Chief of Army or Chief of Air Force (as the case may be).

#### **5. Eligible member**

5.1 In this Determination, a reference to an eligible member is a reference to a member who:

- (a) is an Observer to whom subclause 5.2 applies;

- (b) holds the substantive rank of Lieutenant or Lieutenant Commander on the day on which the member acknowledges an offer;
- (c) is rendering continuous full-time service for which salary is payable;
- (d) meets the medical fitness standards for aviation duty as an Observer;
- (e) is otherwise suitable for continued service because of the member's efficiency and competence;
- (f) receives an offer; and
- (g) acknowledges the offer on or before 30 June 1998.

5.2 This subclause applies to a member who is an Observer if either of the following paragraphs applies:

- (a) the member has served in a flying position in the Navy at any time since 1 January 1993 and, on or before the day on which the member acknowledges an offer, is either:
  - (i) qualified as an Embarked Mission Commander in a type of helicopter currently in service in the Navy; or
  - (ii) engaged, or selected to be engaged, in a course of training which, if satisfactorily completed, will result in the member's being qualified as an Embarked Mission Commander on or before 30 June 1999; or
- (b) the CDF certifies, having regard to the factors set out in subclause 5.3, that the member is essential to the development of the aviation combat forces of the Navy during the required period of service that would apply to the member under this Determination.

5.3 The factors for the purpose of paragraph 5.2(b) are:

- (a) the skills, knowledge and experience possessed by the member;
- (b) the nature of the member's past, current and expected future postings in the Defence Force; and
- (c) any other factor relevant to the member's ability to contribute to the development of the aviation combat forces of the Navy.

5.4 A member is not an eligible member if, on the day on which the member would (but for this subclause) have acknowledged an offer, the member is liable for a period of prospective service or return of service obligation expiring after 1 January 2001.

5.5 A member does not cease to be an eligible member by reason only that the member is promoted to a rank higher than Lieutenant Commander after the relevant day.

## **6. Prescribed amount**

6.1 The amount payable under clause 7, in relation to an eligible member who acknowledges an offer, is the amount specified in column 2 of the Schedule opposite the required period of service in column 1 that corresponds to the required period of service stipulated in the offer.

## **7. Completion bonus**

7.1 An eligible member is entitled to a completion bonus equal to the prescribed amount, if the member remains an eligible member during, and completes, a period of effective service equal to (or periods of effective service the sum of which is equal to) the required period of service stipulated in the offer acknowledged by the member.

7.2 An eligible member is not entitled to more than one prescribed amount in relation to an offer acknowledged by the member.

## **8. Pro-rata payment in certain circumstances**

8.1 If an eligible member is unable to complete the required period of service because the member:

- (a) dies;
- (b) becomes permanently medically unfit for aviation duty as an Observer, as a result of physical or mental incapacity that is not within the member's power to control; or
- (c) is retrenched,

the member or the member's legal personal representative (as the case requires) is entitled to an amount calculated as follows:

$$\begin{array}{r} \text{Prescribed amount} \quad \times \quad \begin{array}{c} \text{Number of days effective service rendered by the member} \\ \text{in the required period of service} \end{array} \\ \hline \text{Number of days in the required period of service.} \end{array}$$

## SCHEDULE

### REQUIRED PERIODS OF SERVICE AND PRESCRIBED AMOUNTS

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<b>Column 1</b>	<b>Column 2</b>
<b>Required period of service</b>	<b>Prescribed amount \$</b>
3 years	40,000
4 years	65,000
5 years	100,000

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## **EXPLANATORY STATEMENT**

### **Defence Determination 1998/7**

#### *Defence Act 1903*

This Determination implements a bonus scheme which will be made available for a limited period to provide for the retention of qualified and experienced Aircrew Observers in the Navy.

Selected officers will become entitled to a specified amount of bonus if they complete a period of service stipulated by the Chief of the Defence Force in an offer acknowledged by the officers on or before 30 June 1998. The amount of bonus will vary according to the period of service required of the member (as set out in the Schedule).

The Determination commences on the day on which it is made, as provided by subsection 58B(4) of the *Defence Act 1903*.

Clause 1 sets out the manner in which the Determination may be cited.

Clause 2 sets out the purpose of the Determination.

Clause 3 defines certain terms used in the Determination. The definition of “effective service” lists those forms of service that are not counted towards the required period of service for the bonus. The list includes service obligations that a member incurs for retention benefits under Part 8 of the *Military Superannuation and Benefits Act 1991*; other return of service obligations; and periods of more than 21 days’ leave without pay.

Clause 4 sets out an interpretation of ‘return of service obligation’ based on a similar provision in Part 8 of the *Military Superannuation and Benefits Act 1991*, modified for the purpose of this Determination to exclude certain aviation training and postings from such an obligation.

Clause 5 specifies the eligibility requirements for admission to the scheme.

Clause 6 establishes the amount of bonus to which an eligible member will be entitled in relation to an offer.

Clause 7 sets out the conditions for entitlement to the prescribed amount, and provides that no more than one amount of bonus is payable in relation to an offer.

Clause 8 provides a pro-rata entitlement for members who are unable to complete the required period of service in the limited circumstances specified in the clause.

The Schedule sets out the required periods of service and the corresponding amounts of bonus.

Authority: Section 58B of the  
*Defence Act 1903*