



Defence Determination 2003/1

I, SUSAN JANE PARR, Director General Personnel Policy and Employment Conditions, Defence Personnel Executive, make this Determination under section 58B of the *Defence Act 1903*.

Dated 30 January 2003

S J PARR
Director General
Personnel Policy and Employment Conditions
Defence Personnel Executive

1 Citation

This Determination is Defence Determination 2003/1, Loss on sale, reimbursement for sale of home and overseas living allowance.

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

2 Amendment

Defence Determination 2000/1, Conditions of Service, as amended,¹ is amended as set out in this Determination.

3 Paragraph 4.6.4 (2) (b) (Reimbursement for loss)

substitute

- (b) the amount by which the valuation of the vehicle exceeds the amount remaining from the sale of the vehicle after deduction of reasonable incidental expenses incurred by the seller.

4 After Clause 4.7.7 (Reimbursement for sale of home or subsequent purchase)

insert

4.7.7A Time limit on sale

- (1) A member is not entitled to be reimbursed for expenses for the sale of a home at a locality under this Division unless the contract for sale is made:
 - (a) for a sale on ceasing to be a member — within 2 years beginning 12 months before the day the member ceased to be a member; and
 - (b) otherwise — within 2 years after written notification to the member of a posting to another locality.
- (2) However, for subclause (1), ***another locality*** does not include:
 - (a) an overseas locality; or
 - (b) a locality where the member is required to occupy a service residence or to live in; or
 - (c) a locality adjacent to the locality where the home is situated; or
 - (d) a specified locality.

- (3) For paragraph (2) (d), a locality mentioned in the following table is a *specified locality*:

<i>New South Wales</i>	<i>Queensland</i>	<i>Western Australia</i>
Bogan Gate	Atherton	Bindoon
Macksville	Biloela	Derby
Myambat	Bowen	Exmouth (including Learmonth)
Tenterfield	Charters Towers	Karratha
	Chinchilla	Katanning
<i>Northern Territory</i>	Ingham	Newman
Katherine	Macrossan	Northam
Nhulunbuy	Roma	Rottneest Island
	Stanthorpe	Spring Hill
<i>South Australia</i>	Tully	Tom Price
Clare	Wallangarra	
Gladstone	Wide Bay	
Port Wakefield		
Woomera		

- (4) For subclause (2), the CDF may approve a locality as a *specified locality* if the CDF is satisfied that it would be unreasonable to expect an eligible person to purchase a home at the locality.
- (5) For subclause (4), the CDF must have regard to:
- the remoteness and isolation of the locality; and
 - the quantity and standard of housing available for purchase at the locality; and
 - any other factor relevant to the locality.

5 Clause 4.7.8 (Reimbursement for sale on ceasing to be a member)

substitute

A former member is entitled to be reimbursed for expenses for the sale of a home in which the member or dependants (if any) live at the final locality of posting if:

- an eligible person incurs expenses in relation to the sale; and
- on ceasing to be a member, the former member moves from the final locality of posting to another locality; and
- the member's previous entitlement was for the purchase of a home.

6 Clause 4.7.11 (Time limit on sale)

omit

7 Paragraph 9.1.17 (r) (Disposable income)

substitute

- (r) the amount of personal income tax and Medicare levy liability of the member on an annual income of that amount.

8 Paragraph 9.1.17 (s) (Disposable income)

omit

9 Transitional

A member in receipt of overseas living allowance on or after 21 November 2002 is entitled to be paid the difference between:

- (a) the rate of overseas living allowance paid on or after that date; and
(b) any higher rate that the member would have received on or after that date had superannuation not been deducted from their disposable income (or disposable salary) for the purpose of calculating overseas living allowance.

NOTE

1. 1. Defence Determination 2000/1 was made on 6 January 2000 and has been amended by Defence Determinations 2000/2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 38, 39, 40; and 2001/1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 and 2002/1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32. The Determination has also been amended by Determination Nos. 8 of 2000, and 3 and 16 of 2001, and 7 and 23 of 2002 made under section 58H.

EXPLANATORY STATEMENT

Defence Determination 2003/1

This Determination amends Defence Determination 2000/1, Conditions of Service (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Act). Chapter 4 of the Principal Determination sets out provisions dealing with removals and mobility for members of the Australian Defence Force (ADF). Chapter 9 of the Principal Determination deals with conditions of service for members of the ADF who are posted for duty overseas.

The purpose of this Determination is to:

- make the calculation for loss on sale of a vehicle easier to understand;
- include a residency requirement for members selling a home on ceasing to be a member;
- move clause 4.7.11 to a more prominent location; and
- implement a minor change to the calculation of disposable income, which is in turn used to calculate overseas living allowance for members on long term posting overseas.

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

Clause 2 specifies that the amendment is made to the Principal Determination, as amended.

Clause 3 provides a less complex structure for the calculation in paragraph 4.6.4 (2) (b) of the Principal Determination. The current structure of the paragraph is complex and can lead sellers to miscalculate their entitlement because they subtract the incidental costs they incur from the difference between the valuation and purchase price. The new formula makes clear that the incidental costs are to be deducted from the purchase price and that the remaining amount is then to be subtracted from the valuation.

Clause 4 inserts a new clause 4.7.7A. The new clause is identical to clause 4.7.11 in the Principal Determination. The material in clause 4.7.11 has been moved to promote its importance and to reduce the need for large numbers of ineligible members to go through the entire Part before becoming aware that they cannot be reimbursed under the Part.

Clause 5 amends clause 4.7.8 to the Principal Determination by inserting a requirement that a member or their dependants occupy a home for which the member claims sale expenses. This provides for a policy that is consistent with the policy in clause 4.7.7, which also includes residence in a house as a precondition to eligibility. It will also ensure that Commonwealth assistance is directed to home purchase and sale only where this is related to relocation of personnel.

Clause 6 omits 4.7.11 in order to move it to a more prominent location within this chapter. This will ensure that this general requirement is read before more specific requirements and circumstances.

Clauses 7 and 8 amend the Principal Determination to remove superannuation from the calculation of disposable salary for the purposes of overseas living allowance. This gives effect to a policy decision to simplify calculation of the allowance. Although superannuation was previously included in the calculation by Defence Determination 32 of 2002, this adds complexity to the allowance, which can be raised or lowered according to a member's

individual rate of contribution to a superannuation scheme. Because a lower rate of contribution can result in a slightly higher allowance payment, there is an incentive for members to reduce superannuation contributions in order to increase the amount of allowance paid. This appears to create a perverse incentive. The amendment will make the calculation of overseas living allowance dependant on a member's actual earnings.

Clause 9 is a transitional provision to ensure that no member will be disadvantaged by superannuation being deducted from their disposable income, from the date of the introduction of the new policy on overseas living allowance on 21 November 2002.

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

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions are subject to merits review under the ADF redress of grievance system, including an appeal to the Defence Force Ombudsman.

Authority: Section 58B of the
Defence Act 1903