



Determination No. 1 of 1981

Determination under Section 58B of the Defence Act 1903¹ (Amendment)

I, DENIS JAMES KILLEN, the Minister of State for Defence, hereby make the following Determination under section 58B of the *Defence Act* 1903.

Dated 13 January 1981.

D. J. KILLEN
Minister of State for Defence

Citation

1. This Determination may be cited as Determination 0114, Married Trainee's Allowance.

Definitions

2. In this Determination, unless the contrary intention appears—

“cohabit”, in relation to a person means to live with that person on a permanent and *bona fide* domestic basis as that person's spouse;

“child”, in relation to a person, means a child (whether born in or outside wedlock), a step-child or a legally adopted child of—

- (a) that person;
- (b) a person who was legally married to the person referred to in paragraph (a); or
- (c) a person who has cohabited with the person referred to in paragraph (a),

who—

- (d) is less than 21 years of age and is wholly or substantially dependent on a person referred to in paragraph (a); or

- (e) is 21 years of age or over and is, through illness or infirmity, wholly or substantially dependent upon a person referred to in paragraph (a);

“*de facto* spouse” in relation to a member means a person of the opposite sex who, although not legally married to that member, cohabits with that member and is a person to whom clause 3 or clause 5 applies and *de facto* relationship has a corresponding meaning;

“trainee” means a member undergoing training in a training capacity specified in Schedule 9 of the Defence Force (Salaries) Regulations while rendering continuous full time service.

Interpretation

3. Subject to clause 4 this clause applies to a person, while a member who although not legally married to that person cohabits with that person and the following conditions are satisfied:

- (a) that member has given notification to his Commanding Officer that he is cohabiting with that person;
- (b) that member has given further notification to his Commanding Officer—
- (i) in a case where the member was cohabiting with that person when the member commenced to render service—on or after the expiration of 12 months from the date on which that member commenced to cohabit with that person or from the date on which that member gave notification under paragraph (a) whichever is earlier; or
 - (ii) in any other case—on or after the expiration of 12 months from the date on which that member gave notification under paragraph (a),
that he continues to cohabit with that person;
- (c) where that member is less than 18 years of age, that member or that person has a child with whom they normally reside and—
- (i) that member's parent or guardian has consented in writing to the member cohabiting with that person; or
 - (ii) that member is liable under an order of or registered with a court to provide maintenance for that person;
- (d) that person has attained the age of 18 years or where that person is less than 18 years of age, that person's parent or guardian has consented in writing to that person cohabiting with the member;
- (e) that member or that person has a child with whom they normally reside or that member and that person are unable to marry each other because either of them is married to another person;

- (f) in a case where that person or that member do not have a child with whom they normally reside, this clause has not previously applied to that person in respect of the cohabitation of that person with that member;
- (g) in a case where that person or that member have a child with whom they normally reside, this clause has not, in respect of the cohabitation of that person with that member, previously applied to that person during a period of 12 months commencing on the day following the last day on which this clause applied to that person; and
- (h) that person is entitled to reside permanently in Australia.

4. Where clause 3 has applied to a person for a period of 18 months, clause 3 ceases to apply to that person on the day following the last day of that period unless—

- (a) that person or the member with whom that person is cohabiting has a child with whom they normally reside;
- (b) that person or that member with whom that person is cohabiting had during that period—
 - (i) a child who would ordinarily live with them but who is a patient in a mental institution; or
 - (ii) a child who has died; or
- (c) a patient in a hospital, nursing home or mental institution is legally married to that person or that member and that person or that member, as the case may be, has refrained from seeking the dissolution of the marriage.

Transitional

5. Where on the day on which this determination is made a person is cohabiting with a member and is recorded in Defence Force records as a person who is cohabiting with that member this clause applies to that person until the expiration of a period of 12 months commencing on that day.

6. For the purposes of clause 3 a member shall be deemed to have given notification under paragraph 3 (a) that he is cohabiting with a person to whom clause 5 applies on the day on which this determination is made and shall be deemed to have given notification under paragraph 3 (b) on the expiration of a period of 12 months commencing on that day that he continues to cohabit with that person.

Married Trainee's Allowance

7. An allowance called "Married Trainee's Allowance" is payable to a trainee—

- (a) who—
 - (i) is legally married;
 - (ii) is in a *de facto* relationship; or
 - (iii) has a child; and

- (b) whose rate of salary is less than the rate of salary payable to a member undergoing training in the capacity specified in Item 1 of Schedule 9 of the Defence Force (Salaries) Regulations.

Definitions

8. In clause 7—

“child”, in relation to a trainee, means a child (whether born in or outside wedlock), a step-child or a legally adopted child of—

- (a) that trainee;
- (b) a person who has ceased to be legally married to that trainee;
- (c) a person who has cohabited with that trainee;
- (d) the spouse or *de facto* spouse of that trainee;
- (e) a person who has ceased to be legally married to the spouse or *de facto* spouse of that trainee; or
- (f) a person who has cohabited with that trainee's spouse or *de facto* spouse,

who—

- (g) is less than 21 years of age and is wholly or substantially dependent on that trainee; or
- (h) is 21 years of age or over and is, through illness or infirmity, wholly or substantially dependent on that trainee.

Rate of Allowance

9. Subject to clause 10, the rate of Married Trainee's Allowance payable to a trainee shall be the amount per year by which the salary for a normal entry recruit during basic recruit training, as specified in Item 1 of Schedule 9 of the Defence Force (Salaries) Regulations, exceeds the salary of that trainee.

10. Where a trainee is married to, or is in a *de facto* relationship with, another trainee, the rate of Married Trainee's Allowance payable to each of those trainees is one half of the amount per year by which the salary for a normal entry recruit during basic recruit training, as specified in Item 1 of Schedule 9 of the Defence Force (Salaries) Regulations, exceeds:

- (a) where their salaries are equal, the salary of one trainee; or
- (b) where their salaries are not equal, the lower salary.

Revocation of Determination 0114, Married Trainee's Allowance

11. Determination 0114, Married Trainee's Allowance issued as Determination No. 7 of 1980 is revoked.

NOTE

1. Previous amendments to Determination 0114, Married Trainee's Allowance: No. 7 of 1980.

EXPLANATORY STATEMENT

DETERMINATION NO. 1 OF 1981

ISSUED BY THE AUTHORITY OF THE MINISTER FOR DEFENCE

UNDER SECTION 58B OF THE DEFENCE ACT 1903

Section 58B of the Defence Act 1903 provides that the Minister may make determinations on conditions of service which are beneficial to members of the Defence Force.

This Determination revokes and replaces Determination 0114, Married Trainees' Allowance. In essence the substitution revises the rules by which a person may be accepted as the de facto spouse of a member for the purposes of entitlement to the allowance.

The revised rules for recognition of a de facto relationship follow a Departmental review and the Minister's approval and will also apply for the purposes of all other beneficial financial conditions of service for members of the Defence Force.