



Determination No. 1 of 1982

**Determination under Section 58B of the
Defence Act 1903**

I, KEVIN EUGENE NEWMAN, the Minister of State for Administrative Services acting for and on behalf of the Minister of State for Defence, hereby make the following Determination under section 58B of the *Defence Act 1903*.

Dated 4 January 1982.

KEVIN NEWMAN
Minister of State for Administrative Services
for and on behalf of the
Minister of State for Defence

Citation

1. This Determination may be cited as Determination 2899, Additional Compensation for Members of the Reserve.¹

Definitions

2. In this Determination unless the contrary intention appears—
- “average civilian weekly earnings”, in relation to a person, means the average civilian weekly earnings of that person on the day on which the injury or disease qualifying him for additional compensation occurred as calculated in accordance with clauses 3 to 8 inclusive;
- “determined amount”, for the purposes of clause 10 in relation to a person to whom additional compensation is payable under clause 9 means—
- (a) 76.5 per cent of—
- (i) in the case of a person who was not in receipt of income derived from a contract of service or employment immediately before the commencement of his relevant reserve service—that person’s weekly military pay payable to him on the day on which the injury or disease qualifying him for additional compensation occurred; or

*Determination 2899, Additional Compensation for Members
of the Reserve 1982 No. 1*

(ii) in any other case—that person's average civilian weekly earnings; or

(b) \$500,

whichever is the lesser;

"disease", in relation to a person to whom additional compensation is payable under clause 9, has the same meaning as in section 5 of the Act;

"injury", in relation to a person to whom additional compensation is payable under clause 9, has the same meaning as in section 5 of the Act;

"military pay", in relation to a person to whom additional compensation is payable under clause 9, means the rate of pay per day payable to that person under the Defence Force (Reserves) (Financial) Regulations on the day on which the injury or disease qualifying that person for additional compensation occurred;

"overtime", in relation to the employment of a person, includes duty on shifts, Saturdays, Sundays or other public holidays and excess travelling time;

"relevant reserve service" means, in relation to a person to whom additional compensation is payable under clause 9, the period of employment of that person out of which or in the course of which the injury or disease qualifying that person for additional compensation under clause 9 arose;

"Reserve Force" means—

- (a) the Naval Emergency Reserve Forces;
- (b) the Citizen Naval Forces;
- (c) the Regular Army Emergency Reserve;
- (d) the Regular Army Reserve;
- (e) the Citizen Military Forces;
- (f) the Air Force Emergency Force; or
- (g) the Citizen Air Force;

"the Act" means the *Compensation (Commonwealth Government Employees) Act 1971*.

Average Civilian Weekly Earnings

3. Subject to clauses 4 to 8 inclusive the average civilian weekly earnings of a person on the day on which the injury or disease qualifying him for additional compensation under clause 9 occurred shall be calculated in relation to the period immediately preceding the date of commencement of that person's relevant reserve service but any part of that period that was earlier than 12 months before that date shall be disregarded.

4. A reference in this Determination to earnings of a person in relation to any employment shall include earnings in respect of payments for overtime and shall be read as including a reference to any allowances which are taxable under the *Income Tax Assessment Act 1936* which may be payable to that person during that employment.

5. Subject to clause 6, if during the period ascertained in accordance with clause 3, the minimum amount per week payable to a person in respect of his civilian employment was varied as a result of the operation of a law of the Commonwealth or of a State or Territory, or as a result of the making, alteration or operation of an award, order, determination or industrial agreement, or of the doing of any act or thing, under such a law, so much of that period as occurred before the variation took place or, if there was more than one variation, before the last variation took place, shall be disregarded for the purposes of clause 3.

6. Where—

- (a) as a result of a variation in the minimum amount per week payable to a person in respect of his civilian employment, a period that occurred before the variation took place would, by reason of clause 5, be disregarded for the purposes of clause 3; and
- (b) if that period were so disregarded, it would be impracticable to calculate the average civilian weekly earnings of the person before the commencement of his relevant reserve service in accordance with clause 3 or the average weekly earnings as so calculated would not fairly represent the rate per week at which that person was being remunerated in respect of that employment before that incapacitation,

that period shall not be so disregarded but the average civilian weekly earnings of that person during that period shall be taken to be the amount that would have been his average civilian weekly earnings during that period if the variation had taken effect at the commencement of that period.

7. If, during any part of the period in relation to which the average civilian weekly earnings of a person are required to be calculated by virtue of clauses 3, 5 and 6, the earnings of that person were reduced, or that person did not receive any earnings, by reason that he was absent from his employment owing to illness or otherwise, that part of that period shall be disregarded for the purposes of clause 3.

8. Where, by reason of the shortness of the period during which a person (hereinafter referred to as the first mentioned person) was employed, it is impracticable to calculate the average civilian weekly earnings before the commencement of his relevant reserve service in accordance with clauses 3, 5, 6 and 7, or the average civilian weekly earnings as so calculated would not fairly represent the rate per week at which that first mentioned person

was being remunerated in respect of that civilian employment before the commencement of his relevant reserve service the average civilian weekly earnings, as calculated in accordance with clauses 3, 5, 6 and 7 from civilian employment before the commencement of his relevant reserve service of a person who was performing comparable work shall be taken to be the average civilian weekly earnings of that first mentioned person before the commencement of his relevant reserve service.

Additional Compensation

9. Where—

- (a) personal injury or disease arising out of or in the course of the employment of a person by the Commonwealth as a member of a Reserve Force, (not being employment in respect of which that person is entitled to be paid salary under the Defence Force (Salaries) Regulations) has been caused to that person;
 - (b) the provisions of section 45 of the Act have commenced to have effect in relation to that injury or disease on a day; and
 - (c) the provisions of section 45 of the Act continue to have effect in relation to that injury or disease on the expiration of a period or of an aggregate of periods totalling 26 weeks commencing on that day,
- additional compensation is payable to that person in respect of the period commencing on the expiration of the period referred to in paragraph (c) and ending on the day on which a determination under section 45 of the Act ceases to have effect in relation to that injury or disease.

10. The rate at which additional compensation is payable under clause 9 to a person (hereinafter referred to as the first mentioned person) is an amount per week specified by the person holding or performing the duties of the Office of Director General Service Conditions in the Department of Defence being an amount by which the determined amount exceeds the sum of any amounts per week in the nature of income (not being amounts payable under this Determination) payable to that first mentioned person in respect of the injury or disease qualifying that first mentioned person for additional compensation under that clause.

Amount to be Adjusted

11. Where the military pay which would have been payable to a person on the day on which the injury or disease qualifying that person to additional compensation under clause 9 occurred, had that person remained in the employment of a Reserve Force, is increased or reduced on or after that day the determined amount shall, for the purposes of clause 10, be deemed to be increased or reduced by the same percentage and with effect from the same day as that military pay was increased or reduced, as the case may be, but shall not be deemed to be increased beyond \$500.

12. Applications may be made in pursuance of section 25 of the *Administrative Appeals Tribunal Act 1975* to the Administrative Appeals Tribunal established by that Act for a review of a decision by the Director General Service Conditions in the Department of Defence being a decision made in pursuance of clause 10.

Application

13. This Determination applies in relation to an injury or disease arising out of or in the course of the employment of a person in a Reserve Force being an injury or disease occurring on or after 23 September 1980.

NOTE

1. Previous amendments to Determination 2899, Additional Compensation for Members of the Reserve: NIL.

EXPLANATORY STATEMENT

DETERMINATION NO. 1 OF 1982

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.

Determination 2899, Additional Compensation for Members of the Reserve introduces a new compensation scheme for members of the Reserve Forces who are totally incapacitated whilst rendering reserve service.

The compensation payable under the new scheme is additional to payments made under the Compensation (Commonwealth Government Employees) Act 1971 (C(CG)E)ACT).

Under the new scheme eligible reservists will, after 26 weeks total incapacity receive 76.5% of their average civilian weekly earnings, up to a maximum of \$500 per week, unless the C(CG)E)Act or any other entitlement would give them more than that amount. Reservists who are either unemployed or who are students at the time of incapacity, will receive 76.5% of their military salary at date of injury.

The matter of weekly rates of pay in respect of junior reservists for the purpose of calculating the average civilian weekly earnings at the date of injury, raised in the course of debate in the Senate on the Defence Acts Amendment Bill 1981, will be the subject of further investigation and submission to Cabinet for consideration.

The date of effect of the determination is 23 September 1980, the day the Prime Minister announced the proposal to introduce the new scheme.