



Determination No. 6 of 1984

Determination under Section 58B of the Defence Act 1903

I, GORDON GLEN DENTON SCHOLES, the Minister of State for Defence, hereby make the following Determination under section 58B of the *Defence Act 1903*.

Dated 9 February 1984.

G. SCHOLES
Minister of State for Defence

Citation

1. This Determination may be cited as Determination 2002, Loss on Sale of Motor Vehicle on Posting Overseas.¹

Definitions

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

“Chief of Staff” means—

- (a) in relation to a member of the Navy—the Chief of Naval Staff;
- (b) in relation to a member of the Army—the Chief of the General Staff; and
- (c) in relation to a member of the Air Force—the Chief of the Air Staff;

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

- (a) the member;
- (b) a person who has ceased to be legally married to the member;

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- (c) a person who has lived on a permanent and *bona fide* domestic basis as the member's spouse;
- (d) the spouse of the member;
- (e) a person who has ceased to be legally married to the spouse of the member; or
- (f) a person who has lived with the member's spouse on a permanent and *bona fide* domestic basis as a spouse,

who—

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

"family", in relation to a member, means—

- (a) one or more of the following persons who normally reside with the member:
 - (i) the spouse of the member;
 - (ii) a child; or
 - (iii) where the member is widowed, unmarried or permanently separated, or the member's spouse is invalided—a person acting as a guardian or housekeeper to a child; or
- (b) a person, other than a person referred to in paragraph (a), approved by an approving authority under clause 4;

"intended", in relation to a period of duty, means intended by the appropriate authority within the arm of the Defence Force to which the member belongs;

"intermediate term duty" means duty in an overseas country for a period which is intended to be more than 6 months but less than 12 months;

"long term duty" means duty in an overseas country for a period which is intended to be 12 months or more;

"member" means a member rendering continuous full-time service;

"motor vehicle" means a registered and roadworthy motor vehicle including a truck, a motor scooter or a motor cycle, with or without sidecar;

"overseas" means outside Australia;

"posting authority" means the formal notification issued to promulgate advice of a member's long or intermediate term posting.

Interpretation

3. In this Determination—

- (a) the expression "*de facto* spouse" has the same meaning as in Determination 0114, Trainee's Dependant Allowance, made under section 58B of the *Defence Act 1903*; and

- (b) "spouse", other than in paragraphs (c) and (f) (last occurring) of the definition of "child" in clause 2, includes "*de facto* spouse".

Approving Authorities

4. An approving authority may, in respect of a person other than a person referred to in paragraph (a) of the definition of "family" in clause 2, and having regard to—

- (a) the reason the person resides with the member;
- (b) the financial position of the person;
- (c) the degree of illness or infirmity of the person;
- (d) the degree of dependency of the person on the member;
- (e) the role the person plays in the member's household; and
- (f) the relationship of the person to the member,

approve that person as a part of the family of the member for the purposes of this Determination.

5. A Chief of Staff may, either generally or otherwise as provided in the instrument of appointment, in writing and signed by him, appoint—

- (a) in the case of the Chief of Naval Staff—an officer who holds a rank in the Navy not below the rank of Lieutenant;
- (b) in the case of the Chief of the General Staff—an officer who holds a rank in the Army not below the rank of Captain; or
- (c) in the case of the Chief of the Air Staff—an officer who holds a rank in the Air Force not below the rank of Flight Lieutenant,

to be an approving authority for the purposes of clause 4.

Loss on Sale of Motor Vehicle on Posting Overseas

6. Where—

- (a) a member is posted overseas on intermediate or long term duty;
- (b) as a consequence of the posting the member sells, in Australia, a motor vehicle owned by him or a member of his family; and
- (c) the price for which the motor vehicle is sold is less than the amount at which the motor vehicle had, not more than 13 weeks before the date of the sale, been valued at a valuation conducted on behalf of the Department,

the member is entitled to be paid—

- (d) an amount equal to the amount by which the amount of the valuation exceeds the price for which the motor vehicle was sold; or
- (e) the prescribed amount,

whichever is the lesser amount.

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7. For the purposes of paragraph 6 (e) the prescribed amount is—

- (a) where the member or a member of his family purchased the motor vehicle—
 - (i) within a period of 1 year immediately preceding the commencement of the posting referred to in paragraph 6 (a);
 - (ii) after the member had been advised by an appropriate person to expect the posting referred to in paragraph 6 (a); and
 - (iii) before the posting authority in connection with the posting referred to in paragraph 6 (a) was issued,

\$300; or

- (b) in any other case—\$600.

8. A member is not entitled to be paid an amount under this Determination unless—

- (a) evidence of the price for which the motor vehicle was sold and of the amount at which it was valued at the valuation referred to in paragraph 6 (c) is furnished to the Department;
- (b) the motor vehicle was owned by the member or a member of his family at the time the posting authority in connection with the posting referred to in paragraph 6 (a) was issued;
- (c) the sale was conducted on a wholly commercial basis;
- (d) the member took reasonable steps to obtain the best possible price on the sale; and
- (e) the value of the motor vehicle did not alter substantially between the date of the valuation and the date of the sale.

9. Where a member sells, in Australia, 2 or more motor vehicles owned by him or a member of his family, he is entitled to be paid an amount under this Determination in respect of only one of those motor vehicles.

10. Where—

- (a) a member or a member of his family has entered into a contract of a kind commonly known as a hire purchase agreement for the purchase of a motor vehicle, whether solely or jointly together; and
- (b) the motor vehicle is subsequently delivered into the possession of the member or a member of his family, as the case may be,

the member or the member of his family shall, for the purposes of this Determination, be deemed to be, while the contract remains in force, and to have been, as from the time when the contract was entered into, the owner of the vehicle, and if the member arranges, with the approval of the owner, for the sale of the motor vehicle, he shall, for the purposes of this Determination, be deemed to have sold the vehicle.

Allowance not Payable

11. This Determination does not apply in relation to the sale of a motor vehicle by a member where—

- (a) the member, or any member of his family whose fares, in relation to a previous posting of the member on any duty in an overseas country, were paid by the Commonwealth, imported a motor vehicle when the member returned to Australia from a previous posting;
 - (b) the person importing that motor vehicle was not required by the law in force in that overseas country to pay the full amount of any tax, duty, levy or other charge, howsoever described, that would under that law have been payable in addition to the purchase price upon the sale of that vehicle to a resident of that overseas country; and
 - (c) that person imported that motor vehicle less than 7 years before the date of sale of a motor vehicle in relation to which this Determination would otherwise apply.
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NOTE

1. Previous amendments to Determination 2002, Loss on Sale of Motor Vehicle on Posting Overseas: Nil.

EXPLANATORY STATEMENT

DETERMINATION NO. 6 OF 1984

ISSUED BY THE AUTHORITY OF THE MINISTER FOR DEFENCE

UNDER SECTION 58B OF THE DEFENCE ACT 1903

Section 58B of the Defence Act 1903 permits the Minister to make determinations on conditions of service for members of the Defence Force.

This determination provides for payment of an allowance to members of the Defence Force posted overseas for intermediate or long term duty who, as a consequence of that posting, sell their motor vehicle at a price below its value.

Determination 2002, Loss on Sale of Motor Vehicle on Posting Overseas, replaces Military Financial Regulation 149A and determinations made under Air Force Regulation 633.

The date of effect is the date of signature of the determination.

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