



DETERMINATION NO 59 OF 1992

DETERMINATION UNDER SECTION 58B OF THE DEFENCE ACT 1903

I, MERYL ANNETTE STANTON, First Assistant Secretary, Government Authorities and Defence Division, Department of Industrial Relations, pursuant to a delegation made by the Minister of State for Industrial Relations under Defence Force Regulation 72A, hereby make the following determination under section 58B of the *Defence Act 1903*.

Dated 18 December 1992

M.A. Stanton
First Assistant Secretary
Government Authorities and Defence Division
Department of Industrial Relations

Citation

1. This determination may be cited as Defence Determination 1992/59.

PART A

Principal Determination

2. In this Part Determination 115, Special Allowance for Medical Officers and Dental Officers, as in force¹ is referred to as the Principal Determination.

Repeal of determination

3. The Principal Determination is repealed.

PART B

Principal Determination

4. In this Part Determination 2601, Recreation Leave, as in force² is referred to as the Principal Determination.

Definitions

5. Clause 2 of the Principal Determination is amended by -

- (a) omitting the definitions of "intermediate term duty", "living in", "living out" and "long term duty"; and
- (b) inserting after the definition of "recreation leave" the following definition -

"'relevant Public Service determination' means Public Service Board Determination 1983/10 as in force from time to time;".

Other remote localities

6. The Principal Determination is amended by omitting clause 15B and substituting the following clause -

"15B. Where a member serves in a locality that is not listed in column 1 of the table in clause 13, a reference in clause 13, 14, 15, 15A, 26 or 35 to the table or a column of the table is to be read as a reference to Schedule 16 to the relevant Public Service determination or an appropriate column of the Schedule.".

Salary of a member in respect of a grant of recreation leave

7. Paragraph 35(d) of the Principal Determination is amended by omitting "under a provision" and substituting "of a kind".

Allowances - grant of recreation leave

8.1 The Principal Determination is amended by omitting sub-clause 36.1 and substituting the following sub-clause -

"36.1 Subject to clauses 37, 43, 45, 46 and 47, an allowance is to be included in the salary of a member for the purpose of clause 35 if it is one of the following allowances -

- (a) Living Out Allowance payable under clause 16 of Determination 0507, Living Out Allowance, as in force from time to time;
- (b) Living Out Away From Home Allowance payable under clause 15 of Determination 0508, Living Out Away From Home Allowance, as in force from time to time;

- (c) Service Allowance;
- (d) Uniform Maintenance Allowance;
- (e) the annual rate of Separation Allowance payable under paragraph 4(b) of Determination 202, Separation Allowance, as in force from time to time or any of the following allowances -
 - (i) Flying Allowance;
 - (ii) Flight Duties Allowance;
 - (iii) an annual rate of Parachutist Allowance payable under paragraph 3(a) of Determination 108, Parachutist Allowance, as in force from time to time;
 - (iv) 3RAR Parachutist Allowance;
 - (v) Clearance Diving Allowance;
 - (vi) Trainee Leader's Allowance;
 - (vii) Trainee's Dependant Allowance;
 - (viii) Sea-going Allowance;
 - (ix) Submarine Service Allowance;
 - (x) Field Allowance payable under paragraph 3(b) of Determination No. 8 of 1987, Field Allowance, as in force from time to time;
 - (xi) the annual rate of Unpredictable Explosives Allowance payable under paragraph 6(a) of Determination 210, Unpredictable Explosives Allowance, as in force from time to time;
 - (xii) the annual rate of Diving Allowance payable under paragraph 4(b) of Determination No. 2 of 1989, Diving Allowance, as in force from time to time;
- (f)
 - (i) District Allowance;
 - (ii) Woomera Allowance;
 - (iii) Antarctic Allowance;
 - (iv) Broken Hill Allowance;
 - (v) Bindoon Allowance; or
- (g) Higher Duties Allowance."

8.2 The Principal Determination is amended by omitting clause 37 and substituting the following clause -

"37. An allowance referred to in sub-clause 36.1 is not to be included in a member's salary for the purpose of clause 35 unless -

- (a) in respect of an allowance referred to in paragraph 36.1(e) -
 - (i) the allowance would have continued to be payable to the member but for the occurrence of the specified day; and
 - (ii) in respect of Sea-going Allowance or Submarine Service Allowance, the member is entitled to payment of the allowance during the period of recreation leave under Determination No. 1 of 1988, Sea-going Allowance, or Determination 204, Submarine Service Allowance, respectively as in force from time to time;
- (b) in respect of an allowance referred to in paragraph 36.1(f), the member is entitled to payment of the allowance during the period of recreation leave under the following determinations as in force from time to time -
 - (i) Determination 301, District Allowance;
 - (ii) Determination 302, Woomera Allowance;
 - (iii) Determination 305, Antarctic Allowance;
 - (iv) Determination 306, Broken Hill Allowance; or
 - (v) Determination 307, Bindoon Allowance;
- (c) in respect of Higher Duties Allowance payable to a member other than a member serving in a locality specified in the table in clause 13 -
 - (i) the allowance has been paid or is payable to the member in respect of the member's duties on the day before the specified day;
 - (ii) the approving authority has certified in writing that for the period specified in the certificate, being a period that is the same as, or includes, part of the period of recreation leave, the member could, if the member were not absent on recreation leave, reasonably have been expected to perform the duties that the member was performing or would, but for the member's absence on recreation leave

or long service leave, have performed on the day before the specified day;

(iii) in the event that the member has performed or would, but for the member's absence on recreation leave or long service leave, have performed for periods that were continuous with one another and with the period of recreation leave the duties of 2 or more positions the rank for each of which is higher than the member's substantive rank, the approving authority has certified in writing that, for the period specified in the certificate, being a period that is the same as, or includes, part of the period of recreation leave the member could, if the member were not absent on recreation leave, reasonably have been expected to perform the duties of one of those positions; and

(iv) the period specified in the certificate referred to in sub-paragraph (ii) or (iii) is a period that commences on the expiration of the day before the specified day or on the expiration of a period specified in a certificate given in accordance with sub-paragraph (ii) or (iii) by the approving authority in respect of another part of the period of recreation leave of the member; and

(d) in respect of Higher Duties Allowance payable to a member serving in a locality specified in the table in clause 13 -

(i) the provisions of sub-paragraphs (i), (ii), (iii) and (iv) of paragraph (d) apply; or

(ii) the allowance has been paid or was payable to the member in respect of the member's duties on the day before the specified day and for a period, or periods, amounting to 12 of the 24 months immediately preceding the specified day."

Notes

1. Determination 115 was made by Determination 10 of 1984 and has been amended by Determination Nos. 17 of 1984 and 25 of 1985. The Determination has also been amended by Determination Nos. 3, 6 and 7 of 1985 and 4 of 1986 made under section 58H.
2. Determination 2601, as amended to date. For previous amendments see Note to Determination 12 of 1992 and see also Determination Nos. 12, 19, 21, 22, 29, 31, 34, 39 and 53 of 1992.

EXPLANATORY MEMORANDUM
DETERMINATION NO 59 OF 1992
Defence Act 1903

This determination affects two Principal Determinations made under section 58B of the *Defence Act 1903* to authorise conditions of employment for members of the Australian Defence Force.

Part A of this determination repeals Determination 115, Special Allowance for Medical Officers and Dental Officers, which is redundant.

Part B amends Determination 2601, Recreation Leave, which authorises the accrual and granting of recreation leave and payment in lieu of recreation leave on cessation for members of the Australian Defence Force serving on duty within Australia and overseas.

Clause 5 repeals redundant definitions and inserts a new definition.

Clause 6 revises a clause dealing with recreation leave at unlisted remote localities, by including a reference to localities and periods of additional recreation leave listed in Schedule 16 to Public Service Board Determination 1983/10 made under section 82D of the *Public Service Act 1922*. Schedule 16 was included in the recreation leave provisions inserted by Public Service Determination 1992/27 with effect from 17 March 1992.

Clause 7 makes a minor consequential amendment arising from the amendment made by clause 8.

Clause 8 revises provisions specifying the allowances to be paid to a member during a period of recreation leave, and the conditions on which payment is to be made. References to allowances have been updated and simplified where practical, without substantively altering the effect of the provisions.

Authority: Section 58B of the
Defence Act 1903