



# DEFENCE DETERMINATION 1994/57

## DETERMINATION UNDER THE DEFENCE ACT 1903

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

Dated 22 November 1994

**M. STANTON**  
First Assistant Secretary  
Government Authorities and Defence Division  
Department of Industrial Relations

### 1. Citation

1.1 This Determination may be cited as Defence Determination 1994/57.

### 2. Commencement

2.1 This Determination is to be taken to have commenced on 23 June 1994.

### 3. Amendment

3.1 Defence Determination 1994/27 is amended as set out in this Determination.

**4. Clause 2 (Definitions)**

**4.1 Definition of "deployment":**

Delete the definition, substitute:

"'deployment' means warlike or non-warlike service overseas by members assigned for duty with a United Nations mission or a similar force;"

**4.2 Definition of "operational area":**

Delete the definition, substitute:

"'operational area', in relation to a deployment, means the operational area specified for the deployment in column 3 of Schedule 1;"

**4.3 Definition of "threat level":**

Delete the definition, substitute:

"'threat level', in relation to a deployment, means the threat level for situational hazards or for environmental hazards, as the case requires, approved by the Minister under subclause 4.2 or 4.3, respectively;"

**4.4 Insert the following definitions:**

"'adjacent threat level', in relation to a threat level, means the next threat level (if any) specified above or below that threat level in Schedule 2;

'non-warlike service' means -

- (a) service with a Peacekeeping Force for the purposes of Part IV of the *Veterans' Entitlements Act 1986*; or
- (b) hazardous service for the purposes of section 120 of that Act;

'warlike service' has the same meaning as in the *Defence Force (Home Loans Assistance) Act 1990*."

**5. Clause 4 (Rate of allowance)**

**5.1 Subclause 4.1:**

Delete "column 2 of Parts A and B of the Schedule", substitute "Parts A and B of Schedule 2".

**5.2 Subclause 4.1:**

Add at the end "in relation to that deployment".

**5.3 Subclause 4.2:**

Delete "the Schedule", substitute "Schedule 2".

**5.4 Subclause 4.2:**

Delete all the words after "to members engaged in the deployment,", substitute:

"having regard to -

- (a) advice from the Chief of the Defence Force on -
  - (i) the political and military situation in the operational area and its stability;
  - (ii) the activities and aims of military forces and other armed groups present in the area;
  - (iii) any introduced military hazards including mines, unexploded ordnance and booby traps;
  - (iv) the incidence of violent crime, civil disturbance, terrorism, insurgency and insurrection;
  - (v) the nature of the deployment;
  - (vi) the command arrangements for the deployment;
  - (vii) a comparison of the circumstances of the deployment with those of other deployments undertaken by the Australian Defence Force; and
  - (viii) any other military factor relevant to the security of members on the deployment; and
- (b) the criteria for assessing threats set out in the Defence Intelligence Organisation document headed -

DIO THREAT ASSESSMENTS  
SITUATIONAL HAZARDS - DEFINITIONS

as attached to Memorandum DGSC 2380/93 dated 9 November 1993 to the Department of Industrial Relations from the Director General Service Conditions in the Headquarters, Australian Defence Force."

5.5 Subclause 4.3:  
Delete "the Schedule", substitute "Schedule 2".

5.6 Subclause 4.3:  
Delete all the words after "to members engaged in the deployment,", substitute:

"having regard to -

- (a) advice from the Chief of the Defence Force on -

- (i) the risk to members' health, taking account of the incidence and nature of any diseases and the quality and availability of health services, medical facilities, support infrastructure and the means of medical evacuation;
  - (ii) the topography and climate and the extent of any pollution and natural hazards;
  - (iii) the extent and quality of the civil infrastructure, including water supplies, accommodation and public sanitation;
  - (iv) the extent of any insect, plant and animal hazards;
  - (v) the risk of road accidents and the traffic conditions;
  - (vi) the prevalent language and social conditions;
  - (vii) the nature of the deployment;
  - (viii) the command arrangements for the deployment;
  - (ix) a comparison of the circumstances of the deployment with those of other deployments undertaken by the Australian Defence Force; and
  - (x) any other environmental factor relevant to the well-being of members on the deployment; and
- (b) the criteria for assessing threats set out in the Defence Intelligence Organisation document headed -

**DIO THREAT ASSESSMENTS  
ENVIRONMENTAL HAZARDS - DEFINITIONS**

as attached to Memorandum DGSC 2380/93 dated 9 November 1993 to the Department of Industrial Relations from the Director General Service Conditions in the Headquarters, Australian Defence Force."

**6. Clause 5 (Additional rate of allowance in special circumstances)**

6.1 Delete the clause, substitute:

**5. Intermediate rate of allowance**

"5.1 The Minister may approve that this clause applies to a deployment in relation to situational or environmental hazards, if the Minister considers, having regard to the factors set out in subclause 4.2 or 4.3 respectively, that the threat level for the deployment from situational or

environmental hazards, as the case may be, is likely to vary between two adjacent threat levels for members performing similar duty in the course of the deployment.

"5.2 The rate of allowance for situational or environmental hazards, as the case may be, for a member on a deployment to which this clause applies is the average of the rates specified in Schedule 2 for the adjacent threat levels referred to in this clause."

**7. Schedule**

7.1 Delete the Schedule, substitute the Schedules set out in the Attachment.

**8. Transitional**

8.1 Until a rate of Deployment Allowance referred to in this clause is varied under Defence Determination 1994/27 as in force from time to time, the rate payable is -

- (a) in the case of a member who is assigned for duty with the United Nations Assistance Mission in Rwanda - \$51.00 a day;
- (b) in the case of a member who is assigned for duty with the United Nations Peacekeeping Operation in Mozambique - \$38.00 a day;
- (c) in the case of a member who is assigned for duty with the Australian Defence Force support to a Pacific Peacekeeping Force for a Bougainville Peace Conference - \$20.00 a day;
- (d) in the case of a member who is assigned for duty with Operation BANNER within Phnom Penh - \$32 a day;
- (e) in the case of a member who is assigned for duty with Operation BANNER outside Phnom Penh - \$52 a day; and
- (f) in the case of a member who is assigned for duty with the US Led Multi-national Force in Haiti - \$50 a day.

**ATTACHMENT**

## SCHEDULE 1

### OPERATIONAL AREAS

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Column 1	Column 2	Column 3
Item	Deployment	Operational area
1.	United Nations Assistance Mission in Rwanda	Rwanda and the adjoining area extending 50 kilometres from the Rwandan border into Burundi, Tanzania, Uganda and Zaire
2.	United Nations Peacekeeping Operation in Mozambique	Mozambique
3.	Australian Defence Force support to a Pacific Peacekeeping Force for a Bougainville Peace Conference	The islands of Bougainville and Buka and the territorial sea of Papua New Guinea surrounding those islands
4.	Operation BANNER	Cambodia
5.	US Led Multi-national Force in Haiti	Haiti

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SCHEDULE 2

RATES OF DEPLOYMENT ALLOWANCE

PART A - Situational hazards - military threat

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Column 1	Column 2	Column 3
Item	Threat level	Rate of allowance \$ a day
1.	Very low	-
2.	Low	15.50
3.	Medium	27.00
4.	High	38.50
5.	Very high	50.00

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PART B - Environmental hazards - hardship

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Column 1	Column 2	Column 3
Item	Threat level	Rate of allowance \$ a day
1.	Very low	-
2.	Low	8.00
3.	Medium	13.66
4.	High	19.33
5.	Very high	25.00

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**EXPLANATORY MEMORANDUM**

**DEFENCE DETERMINATION 1994/57**

*Defence Act 1903*

Defence Determination 1994/27 of 23 June 1994 (the Principal Determination) established an entitlement to Deployment Allowance and related conditions of service for Australian Defence Force (ADF) members assigned for duty with a United Nations mission or similar force.

This Determination amends the Principal Determination in response to views expressed by the Senate Standing Committee on Regulations and Ordinances that certain provisions entailed invalid subdelegation of legislative power. The amendments also take account of legal and drafting advice provided by the Attorney-General's Department.

Clause 2 of this Determination provides for the Determination to commence on the same day as the Principal Determination, in order to avoid any difficulties relating to invalidity of provisions.

Clause 4:

- . amends the definition of "deployment" by removing a reference to declarations about overseas service by the Minister for Defence, and referring instead to types of service, the new definitions of which rely on Acts;
- . amends the definition of "operational area" by removing a reference to declarations by the Chief of the Defence Force, and referring instead to a new Schedule listing the operational areas for each deployment. (It is envisaged that, as a temporary arrangement, before any allowance becomes payable to future deployments the operational area applying to them will be inserted into the Schedule. It is expected that amendments to other legislation establishing entitlements for ADF members undertaking deployments will need to establish an operational area for the purpose of creating those entitlements. When these amendments have been made, this definition will be reconsidered.);
- . amends the definition of "threat level" by referring to threat levels approved for a deployment by the Minister for Defence Science and Personnel under the

operative provisions, and transferring to those decision-making provisions the reference to Defence Intelligence Organisation (DIO) documents setting out the criteria on which the assessment of threat levels is based; and

- . inserts three new definitions of terms necessary for the interpretation of the revised provisions.

Clause 5 amends a provision setting out a framework for the selection of the level of Deployment Allowance to be paid. The amendments:

- . expand the list of factors to which the Minister is required to have regard in approving levels of military and environmental threat, by including the factors formerly used in approving additional amounts of Deployment Allowance under a provision repealed by clause 6;
- . add the DIO threat assessment criteria to the factors required to be used in that decision-making process; and
- . make minor textual modifications.

Clause 6 repeals a provision which formerly purported to authorise discretionary approval of additional amounts of Deployment Allowance within specified monetary limits. These amounts have been subsumed into the rates specified in the new Schedule 2, which apply following approval of threat levels under the expanded approval process implemented by clause 5.

A new provision is substituted to deal with cases in which the Minister considers that the particular circumstances of a deployment warrant an assessment spanning two adjacent threat levels (for example "low to medium").

Clause 7 deletes the former schedule of rates payable, and substitutes two new Schedules: one for use with the new definition of "operational area", and the other setting out revised rates which subsume the former additional amounts. There is no change in the minimum and maximum attainable rates.

Clause 8 is a transitional provision which confirms the rates resulting from approvals by the Minister for certain deployments which have occurred since the Principal Determination was made.

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

Authority: Section 58B of the  
Defence Act 1903