

Defence Determination 1997/45

1, BRUCE VINCENT FENN CLARK, Assistant Secretary, Workplace Relations Branch, Australian Government Employment Group, Department of Workplace Relations and Small Business, acting under a delegation made by the Minister for Workplace Relations and Small Business under section 58E of the Defence Act 1903, make the following Determination under section 58B of the Defence Act 1903.

Dated 18 December 1997

B.V. CLARK
Assistant Secretary
Workplace Relations Branch
Australian Government Employment Group
Department of Workplace Relations and Small Business

1. Citation

1.1 This Determination may be cited as Defence Determination 1997/45.

INOTE-. This Determination commences on the day on which it is made: see Defence Act 1903, subsection 58B(4).I

PART B - Amendment of Determination 301

2. Amendment

2.1 Determination 301, District Allowance, as amended', is amended as set out in this Part.

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3. Clause 2 (Definitions)

3.1 Definition of "temporary duty":

Delete "but does not include duty by a member as a member of a survey party operating in an isolated district".

4. Clause 3 (District Allowance)

4.1 Paragraph 3(b):

Delete the paragraph, substitute:

"(b) serves on temporary duty in an isolated district for a continuous period of more than 21 days; or

4.2 Add at the end:

"3.2. A member to whom paragraph 3(b) applies is entitled to District Allowance from the commencement of the period of temporary duty.".

5. Clause 5A (Discretion to classify localities)

5.1 Delete "of a survey party visits or is to visit ", substitute "performs temporary duty at".

6. Clause 10 (Period of payment)

6.1 Delete "clauses I I to 23", substitute "clauses 12 to 23".

7. Clause II (Member on temporary duty)

7.1 Delete the Clause

8. Clause 12 (Absence on temporary duty)

8.1 Paragraph 12(b):

Delete the paragraph, substitute:

"(b) in the case of a member:

- (i) whose family remains in the isolated district; and
- (ii) who is classified as a Category MS member,

during the period of the member's absence - for the period of the absence; or".

I NO'I'L -: This provision is to be read in conjunction with clauses 3A and 7 of Defence Determination 1991/45, which set out interpretations of 'family of member' and 'Category MS member' respectively.]

9. Clause 16 (Member posted from district)

Clause 9.1 Delete the clause, substitute:

16. Subject to clause 17, a member:

- (a) who is posted from an isolated district to another locality;
- (b) whose family remains in the isolated district; and
- (c) who is classified as a Category MS member,

is entitled to continued payment of District Allowance for the period the member's family remains in the isolated district."

I NO'I'L -: 'This provision is to be read in conjunction with clauses 3A and 7 of Defence Determination 1991/45, which set out interpretations of 'Family of member' and 'Category MS member' respectively.]

10. Clause 17 (Member posted from district)

10.1 Delete "for the period approved under clause 16".

PART C - Amendment of Determination 302

11. Amendment

Woomera Allowance, as amended' is amended as setout in this Part.

12. Clause 5 (Woomera Allowance)

12.1 Paragraph 5(b):

Delete the paragraph.

12.2 Paragraph 5(c):

Delete "30 days", substitute "21 days".

12.3 Add at the end:

"5. 1. A member to whom paragraph 5(c) applies is entitled to Woomera Allowance from the commencement of the period of temporary duty."

13. Clause 12 (Period of payment)

13.1 Delete "clauses 13 to 2 I", substitute "clauses 14 to 2 I".

14. Clause 13 (Member on temporary duty in the Woomera locality)

14.1 Delete the clause.

15. Clause 14 (Temporary absence from the Woomera locality)

15.1 Paragraph 14(a):

Delete the paragraph, substitute:

"(a) in the case of a member:

(i) whose family remains in the locality; and

(11) who is classified as a Category MS member,

during the period of the member's absence - for-the period of the absence; or"

NO'I'L 7: 'This provision i-9 to be read in conjunction with clauses 3A and 7 of Defence Determination' which set out interpretations of 'family of member' and 'Category MS member' respectively.]

16. Clause 19 (Member on leave, ill or hospitalised)

16.1 Delete "the person from time to time holding or performing the duties of the office or appointment of Director General Service Conditions, Pay and Conditions Branch in the Department of Defence", substitute "the Chief of the Defence Force".

11.1 Paragraph 19(a): Delete "and".

16.2 Paragraph 19(b):

Delete "posting.", substitute "posting; and".

16.4 Add at the end:

"(c) any other factor relevant to the requirement for the member's family to remain at the Woomera locality."

PART D - Amendment of Determination 307

17. Amendment

17.1 Detei-mination3O7, Bindoon Allowance as amended 'is amended as set out in this Part.

I 8. Clause II (Absence on temporary duty)

18. 1 Paragraph II (a):

Delete the paragraph, substitute:

"(a) in the case of a member:

(i) whose family remains in the Bindoon Military Area; and

- (ii) who is classified as a Category MS member.

during the period of the member's absence - for the period of the absence; or".

(NOTE: This provision is to be read in conjunction with clauses 3A and 7 of Defence Determination 1991-45, which sets out interpretations of 'family of member' and 'Category MS member' respectively.)

PART E - Amendment of Defence Determination 1996/44

19. Amendment

19.1 Defence Determination 1996/44 is amended as set out in this Part.

20. Clause 5 (Absence on temporary duty)

20.1 Paragraph 5(a):

Delete the paragraph, substitute:

"(a) in the case of a member:

(I) whose family remains at the establishment; and

(ii) who is classified as a Category MS member,

during the period of the member's absence - for the period of the absence; and".

NOTE: 'This provision is to be read in conjunction with clauses 3A and 7 of Defence Determination 1991/45, which set out interpretations (of 'family of member' and 'Category MS member' respectively.)

PART F - Transitional

21. Definition

21.1 In this Part, "the relevant period" means the period beginning on 13 August 1997 and ending immediately before this Determination commences

22. Payment of additional amount of District Allowance

22.1 If, during the relevant period, the amount of District Allowance to which a member would have been entitled under Determination 301, District Allowance, as amended by this Determination exceeds the amount of District Allowance (if any) to which the member was entitled under that Determination as in force, the member is entitled to an amount of District Allowance equal to the amount of the excess.

23. Payment of additional amount of Woomera Allowance

23.1 If, during the relevant period, the amount of Woomera Allowance to which a member would have been entitled under Determination 302, Woomera Allowance, as amended by this Determination exceeds the amount of Woomera Allowance (if any) to which the member was entitled under that Determination as in force, the member is entitled to an amount of Woomera Allowance equal to the amount of the excess.

NOTES

1. Determination 030 1. as amended to date. For previous amendments see Note to Determination No. 15 of 1997 and see also Determination Nos. 15 and 18 of 1997.

2. Determination 302 was made by Determination No. 33 of 1983 and has been amended in, Determination Nos. 37 of 1983- 34 of 1984, 94 of 1986: 3 of 1987: 72 and 77 of 1988. 96. 184 and 204 of 1989: 41 of 1990: 103 and 110 of 1991; 60 of 1992. 31 and 34 of 1995; 20 of 1996.

3. Determination 307. as amended to date. For previous amendments see Note to Determination No. 15 of 1997 and see also Determination No. 15 of 1997.

EXPLANATORY STATEMENT Defence Determination 1997/45 Defence Act 1903

This Determination amends the following Determinations under section 58B of the Defence Act 1903:

- 301 District Allowance;
- 302 - Woomera Allowance;
- 307 - Bindoon Allowance; and
- 1996/44 - Authorising payment of Port Wakefield Allowance.

The put-~~pose~~ purpose of this Determination is to streamline and harmonise the provisions in Determinations 301, 302, 307 and 1996/44 dealing with:
members performing temporary duty in isolated localities; and
authorising the continued payment of the various allowances to members posted, or temporarily absent, from those localities.

Pail A deals with preliminary matters.

Pail B amends Determination 301, which provides for the payment of an allowance where a member serves in an isolated district.

Clause 3 amends the definition of 'temporary duty' by deleting a reference to duty performed by members of survey parties, that excluded application of the definition to those members.

Subclause 4.1 deletes a provision authorising the payment of DA to members of survey parties serving in an isolated district, and substitutes a provision that creates an entitlement to DA to members who perform temporary duty in an isolated district for a continuous period of more than 21 days.

Subclause 4.2 inserts a new provision that, under a specified circumstance, authorises the payment of DA from the commencement of a period of temporary duty.

Clause 5 amends a provision that provided a discretion for the Chief of the Defence Force (CDF) to approve the payment of an amount of DA to members of survey parties serving in a locality, at an amount that would have been payable had that locality been previously graded as an isolated district. The reference to members of survey parties has been replaced with a reference to members performing temporary duty. The criteria for the exercise of the discretion are unchanged. Adverse decisions are subject to grievance procedures including appeal to the Defence Force Ombudsman.

Clause 6 makes a minor textual amendment, arising from the amendment made by clause 7.

Clause 7 deletes a redundant provision.

Clause 8 amends a provision that authorises the continued payment of DA to a member, where the member is temporarily absent from an isolated district and the member's family remains in the isolated district, by including a requirement that the member is classified as a 'Category MS (married/separated) member'. The amendment aligns the provision with similar provisions in other Determinations made under s58B of the Defence Act 1903, dealing with the continued payment of certain allowances in isolated localities.

Clause 9 rewrites a provision that authorises the continued payment of DA to a member, where the member is posted from an isolated district and the member's family remains in the isolated district. The former provision provided for an initial continued payment period of 12 weeks, specified the criteria for the CDF to exercise a discretion to extend the period of payment beyond the initial period, and for a member to be classified as a Category MS member. The new provision authorises continued payment of DA, where a member is posted from an isolated district and is classified as a Category MS member, for the entire period the member's family remains in the isolated district.

As noted in clauses 8 and 9, the provisions are to be read in conjunction with the interpretation of 'family of member' and 'Category MS member' set out in Defence Determination 1991/45 (General definitions and interpretation).

Clause 10 deletes a redundant reference to the former clause 16.

Part C amends Determination 302, which provides for the payment of an allowance where a member serves in the Woomera locality.

Subclause 12.1 deletes a redundant provision dealing with members in survey parties serving in the Woomera locality.

Subclause 12.2 substitutes a reference to 30 days with a reference to 21 days.

Subclause 12.3 inserts a new provision that, under a specified circumstance, authorises the payment of Woomera Allowance (WA) from the commencement of a period of temporary duty.

Clause 13 makes a minor textual amendment, arising from the amendment made by clause 14.

Clause 14 deletes a redundant provision.

Clause 15 amends a provision that authorises the continued payment of WA to a member, where the member is temporarily absent from the Woomera locality and the member's family remains in the locality, by including a requirement that the member is classified as a 'Category MS member'. The amendment aligns the provision with similar provisions in other Determinations made under s58B of the Defence Act 1903, dealing with the continued payment of certain allowances in isolated localities. As noted in the amended clause, the provision is to be read in conjunction with the interpretation of 'family of member' and 'Category MS member' set out in Defence Determination 1991/45 (General definitions and interpretation).

Subclause 16.1 amends a provision dealing with extending the period of payment of WA, where under certain circumstances a member's family remains in the Woomera locality without the member, by vesting a discretion in the CDF instead of the formerly specified approving authority.

Subclauses 16.2 and 16.3 make minor drafting amendments.

Subclause 16.4 adds another criteria to the provision that provides for the exercise of a discretion to extend the period of payment of WA, where a member's family remains in the Woomera locality without the member. Adverse decisions are subject to grievance procedures including appeal to the Defence Force Ombudsman.

Pail D amends Determination 307, which provides for the payment of an allowance where a member serves in the Bindoon Military Area.

Clause 18 amends a provision that authorises the continued payment of Bindoon Allowance to a member, where the member is temporarily absent from the locality and the member's family remains in the locality, by including a requirement that the member is classified as a 'Category MS member'. The amendment aligns the provision with similar provisions in other Determinations made under s58B of the Defence Act 1903, dealing with the continued payment of certain allowances in isolated localities. As noted in the amended clause, the provision is to be read in conjunction with the interpretation of 'family of member' and 'Category MS member' set out in Defence Determination 1991/45 (General definitions and interpretation).

Pail E amends Defence Determination 1996/44, which provides for the payment of an allowance where a member serves in the Port Wakefield establishment.

Clause 20 amends a provision that authorises the continued payment of Port Wakefield Allowance to a member, where the member is temporarily absent from the locality and the member's family remains in the locality, by including a requirement that the member is classified as a 'Category MS member'. The amendment aligns the provision with similar provisions in other Determinations made under s58B of the Defence Act 1903, dealing with the continued payment of certain allowances in isolated localities.

Pail F sets out two transitional arrangements which provide for the payment of an additional amount of either District Allowance or Woomera Allowance, as the case in av be, for the period between 13 August 1997 (the day on which certain members were posted for temporary duty to an isolated district, which 'necessitated the review of the provisions dealing with temporary duty) and the day before this Determination commences.

Authority: Section 58B of the Defence Act 1903