



Defence Determination 2004/9

I, SUSAN JANE PARR, Director General Personnel Policy and Employment Conditions, Defence Personnel Executive, make this Determination under section 58B of the *Defence Act 1903*.

Dated 30 March 2004

S J PARR
Director General
Personnel Policy and Employment Conditions
Defence Personnel Executive

1 Citation

This Determination is Defence Determination 2004/9, Higher duties allowance – amendment.

2 Commencement

This Determination commences on 1 May 2004.

3 Amendment

Defence Determination 2003/21, Conditions of Service, as amended,¹ is amended as set out in this Determination.

4 Part 4 (Higher duties allowance)

substitute

Division 1 Introduction

2.4.1 Purpose

The purpose of this Part is to recognise a member's performance of the duties of a position that attracts higher responsibility or work value.

2.4.2 Structure of this Part

This Part is divided into four divisions, listed in the following table:

Number	Title	What is in it
Division 1	Introduction	Includes the purpose of the Part, definitions and structural information.
Division 2	Eligibility to perform higher duties	Describes the classes of member that are and are not eligible to perform higher duties.
Division 3	How to work out the amount of higher duties allowance	Describes how to work out the allowance and includes conditions on it.
Division 4	Termination of higher duties	Explains how a direction to perform higher duties ends.

Note: It is important to read Division 2 and then Division 3, as the matters in Division 2 need to be looked at before the rules and conditions in Division 3 are applied.

2.4.3 Definitions

In this Part:

higher duties, for a member, means temporary performance by a member of the duties of a vacant position which is of a higher rank or work value than the member's substantive position.

total remuneration, for a member, means salary and any annual rate of allowance (excluding rent allowance and higher duties allowance), payable to the member.

vacant position includes a position that is temporarily vacant but does not include a position that has not been formally established.

Example

A position might be defined as vacant when the occupant of a position is absent on leave, on a training course, or on a secondment.

Division 2 Eligibility to perform higher duties

2.4.4 Member who is eligible to perform higher duties

- (1) A member is eligible to perform higher duties when:
 - (a) the member is entitled to salary; and
 - (b) the member is directed to perform the higher duties for a period by another member who is at least one rank higher than the vacant position and in the member's chain of command and who is satisfied that:
 - (i) the duties of the vacant position cannot be distributed among other members;
 - (ii) the member can perform the duties of the position competently, having regard to paragraph 2.4.4 (c); and
 - (c) the member possesses the recognised professional, trade or specialist skills that are required to perform the duties of the vacant position.

Example 1

The principle in subclause 2.4.4 (c) means that a specialist officer who is directed to perform the duties of a higher rank and competency level but who does not meet the requirements for the higher competency level would be ineligible to perform higher duties in that position. The officer could act at a higher rank, but would only be eligible for higher duties allowance for positions at their existing competency level. See clause 2.4.10 for how partial higher duties might apply.

Example 2

A non-Commissioned officer who is directed to act at a higher rank in a commissioned officer's position and is able to satisfy the requirements for the rank would be entitled to higher duties allowance at the lowest salary rate for the rank, subject to subclause 2.4.7 (2).

- (2) The direction to perform higher duties under paragraph 2.4.4 (1) (b) can be given for a maximum period of three months, unless the member has been posted into the higher position, when the direction can be for a longer period.

Note: The direction to perform higher duties in accordance with paragraph 2.4.4 (1) (b) is recorded on Form AD 288 – Approval for Payment of Higher Duties.

2.4.5 Members whose eligibility or entitlement is limited

Limits on a member's eligibility to perform higher duties and entitlement to higher duties allowance are listed in the following tables.

Table 1 GENERAL MEMBERS		
	A member who is	Is then
a.	directed to perform higher duties continuously for up to three months	eligible to perform higher duties for up to three months. A fresh direction to perform higher duties may be made on review of the arrangements after three months.
b.	directed to perform higher duties continuously for longer than three months	eligible to perform higher duties only if they are posted to the vacant position.
c.	directed to perform higher duties while on part-time leave without pay	
d.	directed to perform higher duties in a position two or more ranks higher than their substantive position	entitled to higher duties allowance for partial performance only (see clause 2.4.10).
e.	on continuous full time service and directed to perform duty in a higher position in the Reserve Forces.	not entitled to higher duties allowance.
f.	a trainee or member undergoing training, who is entitled to salary under Schedule 8 of DFRT Determination No. 6 of 1992	
g.	classified as a Second Lieutenant and who performs higher duties in the position of a Lieutenant	not entitled to higher duties allowance because there is no significant increase in responsibility between these ranks.
h.	classified as a Private and who performs higher duties in the position of a Private Proficient	

Table 2 SPECIALIST OFFICERS		
	A member who is	Is then
a.	a specialist officer directed to perform at a higher rank at their existing competency level, when the higher rank does not include that competency level	entitled to higher duties allowance at the special rate (if any) listed in the applicable salary schedule.
b.	a specialist officer directed to perform at a higher rank and competency level (which they do not hold)	entitled to higher duties allowance for partial performance only (see clause 2.4.10).
c.	a specialist officer directed to perform at a higher competency level within their substantive rank	not entitled to higher duties allowance.
d.	a specialist officer directed to perform at a higher rank and competency level (which they do not hold) and who is not approved for partial performance	

Division 3

How to work out the amount of higher duties allowance

2.4.6 Start date for higher duties allowance

- (1) A member becomes entitled to payment of higher duties allowance after they perform higher duties for a continuous period of five days:
 - (a) beginning on the day the direction to perform the higher duties begins; and
 - (b) excluding days on which the member is not required to attend for duty.
- (2) A member becomes entitled to payment of higher duties allowance from the first day they are required to perform higher duties on return from leave if:
 - (a) the previous direction for the member to perform higher duties was revoked under paragraph 2.4.12; and
 - (b) the member is directed to resume performance of higher duties immediately on returning from that leave.
- (3) A member on Reserve Service becomes entitled to payment of higher duties allowance after they perform higher duties for a continuous aggregate period of five days:
 - (a) beginning on the day the direction to perform the higher duties begins; and
 - (b) including any part days for which the member performs the higher duties; and
 - (c) excluding days on which the member is not required to attend for duty.

Example 1

An eligible member on continuous full-time service who works from Monday to Friday and who begins higher duties on Thursday will complete the 5 days continuous performance of the duties at the end of the following Wednesday. Because the member is not normally required to attend for duty on Saturday, Sunday or public holidays, these days are excluded from the calculation so that they do not interrupt the five day period.

Example 2

An eligible member on continuous full-time service who works on a shift roster and who begins higher duties on a day would count the five days from the start of that day's work. Any days on which they were rostered off duty would not be counted toward the five days. The off duty period would not interrupt the continuity of the five days, similar to a weekend for a member working a normal business week.

Example 3

An eligible member on Reserve service who begins performance of higher duties on Monday but who spends Tuesday working in another position performing alternative duties has broken the five days uninterrupted service in the higher position. The member would start the five days again on the next day that they performed higher duties

Example 4

An eligible member on Reserve service who performed 10 half days continuously in a higher position could add up those part days to make a continuous aggregate period of five days.

2.4.7 Calculation of higher duties allowance

- (1) For the period when an eligible member is entitled to higher duties allowance, the member is entitled to an allowance equal to the difference between:
 - (a) the member's total remuneration; and
 - (b) the total remuneration to which the member would be entitled if promoted to the rank of the higher position, at the base rate for that rank.

Example 1

This means that the rate of higher duties allowance is worked out using the “on-promotion”, or base rate, of salary for a rank. Incremental rates are not used in working out higher duties allowance, given the short-term nature of higher duties. A member does not get an incremental advancement for work in the higher position.

Example 2

A member with the status of non-Commissioned aircrew would retain their existing qualification and skill entitlement under flying allowance while undertaking higher duties in an officer position.

Non-example

A non-Commissioned officer performing higher duties in an officer position would be entitled to higher duties allowance worked out for the higher rank using rates from Schedule 2 of DFRT Determination No. 6 of 1992, Salaries, and not from Schedule 3 of that Determination. See subclause 2.4.7 (2) below for an explanation of how the higher duties allowance is worked out for a non-Commissioned officer who performs higher duties in an Commissioned officer position.

- (2) For the period when a non-Commissioned officer performs higher duties in a Commissioned officer’s position and would be entitled to an allowance under subclause (1) except that their total remuneration under paragraph (1) (a) is higher than that of the higher position, the member is entitled to receive an allowance equal to five per cent of their base salary.

Example 1

When a non-Commissioned officer performs higher duties in a position with the rank of a Commissioned officer, the total remuneration for the higher ranked position may be less than the amount they would usually receive. No higher duties allowance would be payable under subclause 2.4.7 (1). Subclause 2.4.7 (2) provides that the member would get an extra five per cent of their base salary (excluding service allowance) for the period of higher duties.

- (3) For the period when a specialist officer who is an eligible member performs higher duties and would be entitled to an allowance under subclause (1) except that their total remuneration under paragraph (1) (a) is higher than that of the higher position, the member is entitled to receive an allowance equal to salary at the second incremental rate for their competency level at the higher rank.

2.4.8 Chaplains – higher duties allowance

- (1) This clause applies to a chaplain who is directed to perform, and performs, a period of temporary duty in a higher Division.
- (2) If the Chaplain does not meet the competency requirements established by the CDF for the higher Division then they cannot be advanced beyond the maximum increment for their substantive Division and are entitled to:
 - (a) if there is a higher increment for their Division — an allowance at the rate of the next higher increment to the member’s; or
 - (b) if there is no higher increment in their Division — an allowance at the rate of five per cent of the chaplain’s base salary.
- (3) For this clause a reference in this Division to a member’s rank is a reference to a Chaplain’s Division.

2.4.9 Higher duties payable when member on leave

- (1) This clause applies to an eligible member who performs higher duties and proceeds on leave.
- (2) If the member is posted to the higher position, or is on leave for up to one month during the period for which they are entitled to higher duties allowance, and continues in the higher position on their return from leave then the period of higher duties includes the period of leave.

- (3) If:
 - (a) the member is on leave for more than one month; and
 - (b) the CDF certifies in writing the period that the member would have continued to perform the duties if not for the leave,then the member is entitled to continue to be paid higher duties allowance for the period specified in the certificate.
- (4) This clause applies even if another person performs the higher duties while the member is away on leave.

Note: For higher duties allowance to be included in a payment instead of recreation leave or long service leave, see Chapter 8.

2.4.10 Partial performance for higher duties

- (1) This clause applies if a member is directed to perform some or all of the duties of a vacant position that is two or more ranks higher than the member's rank.
- (2) For assessment of a member's entitlement to higher duties allowance for the period of the direction, the member is taken to be performing the duties at a rank, employment category or work value determined by the CDF.
- (3) For subclause (2), the CDF must have regard to:
 - (a) the duties that the member is required to perform; and
 - (b) the member's level of competence in performing the duties; and
 - (c) any restriction placed on the rank to which the member is able to be promoted; and
 - (d) any other factor relevant to the member's performance of the duties.

Example

If a member is required to act in a position two ranks higher than their substantive rank, the CDF may determine to pay them at a salary in the lower rank because the member is not able to perform all of the duties of the position.

- (4) Partial performance is not payable to a specialist officer who performs duties at a higher competency level within their substantive rank.

2.4.11 Duties not in the Defence Force

- (1) This clause applies if an eligible member is directed to perform higher duties in a position that is not in the Defence Force, including a position in a foreign force or the Australian Public Service.

Note 1: Members who perform work in a foreign force are remunerated according to an administrative arrangement, called a Memorandum of Understanding (MOU), made between the Commonwealth and the foreign force's governing body.

Note 2: The member does not become a member of the other Service.

- (2) For the purpose of determining the rate of higher duties allowance to which the member is entitled, the member is taken to be performing the duties at a rank, employment category, or work value determined by the CDF to be appropriate for the duties.
- (3) For subclause (2), the CDF must have regard to a written submission from the member's Commanding Officer or supervisor about:
 - (a) the nature and level of complexity of the duties; and
 - (b) the responsibilities involved in performing the duties; and
 - (c) the level of supervision exercised in performing the duties; and

- (d) the extent to which the duties involve accountability for personnel, finance, or machinery or other equipment; and
- (e) an Australian Public Service classification that would normally apply to the duties; and
- (f) any other factor relevant to performance of the duties.

Example

The following table is a guide for use in comparing Australian Defence Force and Australian Public Service ranks and classification levels when performing clerical and duties that do not require the exercise of military command responsibilities. It is not intended for use as a statement of equivalent ranks and classifications. The table does not include any information that can be used to compare competency standards for employment category or work value purposes.

Australian Public Service (APS) classification under <i>Defence Employees' Certified Agreement 2002-2003</i>	Navy rank	Army rank	Air Force rank
APS 1 / Enrolled Nurse	SMN	PTE	AC
	AB	LCPL	LAC
APS 2 / Science and Technology Level 1	LS	CPL	CPL
APS 3 / Technical	PO	SGT	SGT
		SSGT	
APS 4 / Registered Nurse / Science and Technology Level 2	CPO	WO2	FSGT
	WO	WO1	WOFF
	ASLT	2 nd LT	PLTOFF
	SBLT	LT	FLGOFF
APS 5 / Science and Technology Level 3	LEUT	CAPT	FLTLT
APS 6 / Science and Technology Level 4	LCDR	MAJ	SQNLDR
Executive Level 1 (EL1) / Legal 1 / Science and Technology Level 5	CMDR	LTCOL	WGCDR
Executive Level 2 (EL2) / Legal 2 / Science and Technology 6-8	CAPT	COL	GPCAPT
Senior Executive Service (Band 1)	CDRE 1 Star	BRIG 1 Star	AIRCDRE 1 Star
Senior Executive Service (Band 2)	RADM 2 Star	MAJGEN 2 Star	AVM 2 Star
Senior Executive Service (Band 3)	VADM 3 Star	LTGEN 3 Star	AM 3 Star
Secretary / CDF	ADM 4 star	GEN 4 star	ACM 4 star

Note: A member acting in a position which required the exercise of powers under the *Public Service Act 1999* would need to hold a written delegation of those powers under the public service framework in order to perform those duties accountably.

Division 4 Termination of higher duties

2.4.12 Early termination of higher duties

- (1) A direction to perform higher duties can be revoked, varied or rescinded by written notification to the member, by a member who is at least one rank higher than the vacant position and in the member's chain of command.
- (2) The direction to perform higher duties can only be changed prospectively from the date that the member is notified of the change.

Example

A member who is posted into a higher position to perform higher duties and then is required to go on operations at their substantive (lower) rank continues to be eligible for the higher duties allowance unless action is taken to terminate the direction to act in the higher position.

2.4.13 Automatic termination of higher duties

A member ceases to be entitled to payment of higher duties allowance when the direction to perform the higher duties ends.

5 Transitional

A member who was directed to perform higher duties or partial higher duties on or before 1 May 2004 continues to be entitled to higher duties allowance under the rules that applied on the day before this determination commenced, until the date in the table.

	A member who is	remains entitled to higher duties allowance until	or until
a.	posted to the higher position	1 November 2004	the day the direction to the member to perform higher duties or partial higher duties ends.
b.	not posted to the higher position	1 August 2004	

NOTE

1. Defence Determination 2003/21 as amended to date. For previous amendments see Note to Defence Determination 2004/1 and see also Defence Determinations 2004/1, 2, 3, 4, 5, 6, 7, and 8.

EXPLANATORY STATEMENT

Defence Determination 2004/9

This Determination amends Defence Determination 2003/21, Conditions of Service (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Act). Chapter 2 of the Principal Determination sets out provisions dealing with matters relating to salary for members of the Australian Defence Force (ADF).

The purpose of this Determination is to clarify existing provisions on the payment of higher duties allowance and to provide a mechanism to reward non-commissioned officers who are directed to perform the duties of commissioned officers for a fixed period.

Clause 1 of this Determination sets out the manner in which this Determination may be cited.

Clause 2 provides that this Determination commences on 1 May 2004, as provided by subsection 58B(4) of the *Defence Act 1903*.

Clause 3 specifies that the amendments are made to the Principal Determination, as amended.

Clause 4 substitutes a new Part 4 of Chapter 2 of the Principal Determination. This new version of the Division provides a much clearer and less condensed explanation of higher duties allowance. It does this by providing an expanded structure outlined in new clause 2.4.2:

- clause 2.4.3 defines the concept of higher duties, and related concepts;
- clauses 2.4.4 to 2.4.5 describe which members are eligible to perform higher duties, including information for specialist officers;
- clause 2.4.6 describes the temporal prerequisite for entitlement to payment of higher duties allowance;
- clause 2.4.7 provides a clearer method for calculation of the amount of allowance payable;
- clauses 2.4.8 to 2.4.11 describe special circumstances for the payment of higher duties allowance, including a discretion for the Chief of the Defence Force to determine to pay an allowance for partial performance;
- the special provision in subclause 2.4.4 (4) of the Principal Determination, for higher duties allowance relating to the position Under Secretary Defence Materiel, has been omitted from the Principal Determination to reflect that the position no longer exists; and
- clauses 2.4.12 to 2.4.13 clearly explain the circumstances in which the allowance may be terminated.

Examples are used frequently throughout the text to assist administrators to understand how the allowance applies to members performing higher duties.

The new Part includes a clearer description of the start date for payment of higher duties allowance in clause 2.4.6. This clause provides that members who resume performance of higher duties after an interval of long leave do not need to satisfy the five-day minimum threshold for payment of the allowance.

The new Division also contains a new clause 2.4.7 which provides a mechanism to pay non-commissioned officers an amount to recognise their performance of higher duties. When a non-commissioned officer moves into the commissioned officer salary scale, there is sometimes a disparity between the salary scales. The result is that the officer may perform

higher duties in a job that attracts a slightly lower salary than the officer's original position. To address this, a member who performs work in a job that attracts a lower remuneration would get higher duties allowance paid at the rate of five per cent of their existing salary.

The new Division also includes material that was previously published as guidance to administrators, including detailed information about limits on higher duties and the payment of higher duties allowance when a member goes on leave. This guidance has been incorporated to provide a single source document for rules about higher duties allowance.

Clause 5 provides a transitional provision which has the effect of preserving any entitlement that exists on the day this Determination is made, until such time as the direction to the entitled member to perform higher duties ceases or for a maximum period of six months for members posted to the higher position.

Authority: Section 58B of the
Defence Act 1903