



Defence Determination 2007/5

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

Dated 13 February 2007

S R GRZESKOWIAK
Director General
Personnel Policy and Employment Conditions
Personnel Executive

1 Citation

This Determination is Defence Determination 2007/5, Salary and allowances during detention or suspension – amendment.

2 Commencement

This Determination commences on the date of signature.

3 Amendment

Defence Determination 2005/15, Conditions of Service, as amended,¹ is amended as set out in this Determination.

4 Chapter 3 Part 6 (Salary and allowances during detention or suspension)

substitute

Part 6: Salary and allowances when a member is absent without leave, in civil custody or undergoing a period of detention or imprisonment

3.6.1 Overview

A member may lose their salary and allowances, or have them suspended, during any of the following situations.

- a. Absence without leave.
- b. Absence from duty and in civil custody.
Note: This does not apply if a member is on approved leave while in custody.
- c. Serving a period of detention under Service law.
- d. Serving a period of imprisonment under a law that is not Service law.

See: Part XIII of the *Defence Force Regulations 1952*

3.6.2 Benefits continue in some situations

- 1. A member may continue to receive certain benefits if they are in any of the following situations.
 - a. On service detention.
 - b. On absence without leave, which does not lead to discharge, civil conviction or service conviction as described in regulation 65 of the *Defence Force Regulations 1952*.
 - c. On approved leave for a period of civil custody pending or during the trial of the member for an offence.

2. A member described in subclause 1 may continue to receive any benefit listed in the following table.

Item	Benefit	For conditions for payment, see
1.	ADF district allowance	Chapter 4 Part 4 Divisions 1 and 2
2.	Woomera allowance	Chapter 4 Part 4 Division 3
3.	Port Wakefield allowance	Chapter 4 Part 4 Division 4
4.	Removal and storage for a member with dependants	Chapter 6
5.	Housing assistance	Chapter 7
6.	Education assistance	Chapter 8
7.	Dependants with special needs assistance	Chapter 8
8.	Uniform allowance	Chapter 10 Part 1
9.	Overseas living allowance	Chapter 15 Part 2

3.6.3 Benefits for dependants

1. A member's dependant continues to receive benefits if the member is absent for any of the reasons listed in subclause 3.6.1.

Example: A member gets education assistance for his son. The member is charged and sentenced to serve a twelve-month period of imprisonment under Service law. The member's son applies to continue receiving the assistance. The member's Service Chief agrees to continue the assistance until the end of the son's critical school year.

2. The Service Chief may decide that a member's dependants are to receive benefits of the kind listed in the following table.

Item	Benefit	For conditions for payment, see
1.	ADF district allowance	Chapter 4 Part 4 Divisions 1 and 2
2.	Woomera allowance	Chapter 4 Part 4 Division 3
3.	Port Wakefield allowance	Chapter 4 Part 4 Division 4
4.	Removal and storage	Chapter 6; Chapter 14
5.	Housing assistance	Chapter 7; Chapter 15
6.	Education assistance	Chapter 8, Part 4
7.	Dependants with special needs assistance	Chapter 8
8.	Emergency support for Families Scheme	Chapter 8
9.	Bereavement payment.	Chapter 11, Part 3
10.	Overseas living allowance payable on the same basis as before the member became absent.	Chapter 15 Part 2
11.	Accompanied rate of hardship allowance payable on the same basis as before the member became absent.	Chapter 16

3. The Service Chief may decide that benefits payable under subclause 1 or 2 cease from a specified date.

Example: A member's service is to be terminated from a date. The Service Chief notifies the member's dependants that their benefit will cease from the same date.

4. The Service Chief must consider the following factors when making a decision under subclause 2 or 3.
 - a. The personal circumstances of the member or their dependants.
 - b. Whether the member's service will be terminated.
 - c. Whether the member's dependants have insufficient immediate family or local support.
 - d. Whether there are Commonwealth benefits available to the dependants.
 - e. Any other factors relevant to the application.

NOTE

1. Defence Determination 2005/15, as amended to date. For previous amendments see Defence Determinations 2007/1, 2, 3 and 4. Certain provisions of the Determination have been modified by Determination No. 5 of 2005 and Nos. 1 and 16 of 2006, made under section 58H of the *Defence Act 1903*.

EXPLANATORY STATEMENT

Defence Determination 2007/5

This Determination amends Defence Determination 2005/15, Conditions of Service (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Act). Chapter 3 of the Principal Determination sets out provisions dealing with salaries and bonuses for members of the Australian Defence Force (ADF).

The purpose of this Determination is to amend the rules relating to the payment of benefits when the member is absent without leave, in civil custody or undergoing a period of detention or imprisonment. The *Defence Force Regulations 1952* (the Regulations) prescribe forfeiture of salary and allowance in certain circumstances. This Determination explains how a member's salary and allowance may continue as permitted by the Regulations. It also sets out the arrangements that apply in circumstances that the Regulations do not deal with, such as the continuing entitlement that vest with the member's dependants under section 58B of the Act.

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

Clause 2 of this Determination provides that the Determination commences on the date of signature, as provided by subsection 58B(4) of the Act.

Clause 3 specifies that the amendment is made to the Principal Determination, as amended.

Clause 4 amends Part 6 to Chapter 3 of the Principal Determination, which deals with salary and allowances during detention or suspension. The amendment substitutes a new Part 6 to update the list conditions a member and their dependants may receive if the member is absence without leave or undergoing a period of detention under Service law. It also includes a discretion to allow a Service Chief to approve and terminate the payment of benefits directly to (and for the benefit of) a member's dependants.

- Clause 3.6.1 explains that a member will forfeit their salary and allowances, or have them suspended, if the member is absent without leave, in civil custody or undergoing a period of detention or imprisonment. This summarise the affect that the Regulations may have in these circumstances.
- Clause 3.6.2 lists benefits a member may continue to receive in situation where the Regulations do not mandate forfeiture.
- Clause 3.6.3 provides that a member's dependants may continue to receive benefits in their own right. The amendment provides discretion for the member's Service Chief to approve and cease the dependant's entitlement to benefits. This amendment will allow ADF families to continue to receive certain benefits when the member's salary and allowances have been suspended or forfeited. This amendment recognises that the dependants of a member have relocated and been affected by mobility requirements imposed on the member and may require assistance even where the member has ceased to be eligible for benefits.

Authority: Section 58B of the
Defence Act 1903