



## Defence Determination 2009/70

I, BRIAN GARY PAULE, Director General Personnel Policy and Employment Conditions, make this Determination under section 58B of the *Defence Act 1903*.

Dated 28 October 2009

B G PAULE  
Director General  
Personnel Policy and Employment Conditions  
People Strategies and Policy Group



**1 Citation**

This Determination is Defence Determination 2009/70, Additional military compensation – amendment.

**2 Commencement**

This Determination commences on 29 October 2009.

**3 Amendment**

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

**4 Clause 11.2.5 (Definitions), definition of dependent child**

*substitute*

Dependent child	<p>Is a person who meets all the following conditions.</p> <ul style="list-style-type: none"><li>a. The person meets the definition of child in clause 1.3.75. <b>Exception:</b> Conditions in clauses 1.3.78 and 1.3.79 do not need to be met for the child to be considered a dependant. <b>See:</b> Chapter 1 Part 3 Division 2 clause 1.3.75, Child</li><li>b. The person is wholly or partly dependent on the member for economic support.</li><li>c. The person meets either of the following conditions.<ul style="list-style-type: none"><li>i. They are under 16 years old.</li><li>ii. They are 16 or more years old but under 25 years old, and meet the education test.</li></ul></li></ul> <p>In this definition <b>meeting the education test</b> means meeting both the following conditions.</p> <ul style="list-style-type: none"><li>a. The person is in full-time education at a school, college, university or other educational institution.</li><li>b. The person is not ordinarily in employment or working on their own account.</li></ul>
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**5 Clause 11.2.5 (Definitions), definition of spouse**

*substitute*

Spouse	<p>Has the same meaning as in the <i>Safety, Rehabilitation and Compensation Act 1988</i>.</p> <p><b>Note:</b> This meaning includes a de facto partner (whether of the same sex or a different sex).</p>
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**6 Clause 11.2.9 (Calculation of the ADB)**

*substitute*

**11.2.9 Amount of the ADB**

1. The spouse of a deceased member is entitled to a payment of \$47,395.78.
2. In addition to the spouse amount (if any), an amount of \$70,277.43 is payable for each person who was a dependent child of the member at the time of the member's death.

**Note:** The dollar amounts in this clause are indexed.

**See:** [Division 6](#) clause 11.2.27, Indexation of amounts

**7 Subclause 11.2.12.1 (Calculation of the SIA)**

*substitute*

1. The basic amount of SIA in relation to a member is \$66,663.45.

**8 Subclause 11.2.12.2 (Calculation of the SIA)**

*omit*

\$60,389.17

*insert*

\$70,277.43

**9 Subclause 11.2.14.3 (Interim payment of SIA)**

*substitute*

3. The interim payment amount is \$66,663.45.

**10 Subclause 11.2.26.1 (Reimbursement for cost of financial advice)**

*omit*

\$1,207.85

*insert*

\$1,405.62

## 11 Clause 11.2.27 (Indexation of amounts)

*substitute*

1. Section 13 of the SRC Act applies to the dollar amounts specified in subclauses 11.2.9.2, 11.2.12.1 and 11.2.12.2 and clauses 11.2.14 and 11.2.26 as if both these conditions were met.
  - a. Those amounts were relevant amounts mentioned in subsection 13(1) of the SRC Act.
  - b. References in that section to the SRC Act were references to this Part.
2. Section 13AA of the SRC Act applies to the dollar amount specified in clause 11.2.9.1 as if both these conditions were met.
  - a. That amount was a relevant amount mentioned in subsection 13AA(1) of the SRC Act.
  - b. References in that section to the SRC Act were references to this Part.

## 12 Transitional

1. This clause applies to the spouse of a former member, if all the following requirements were met during the period 13 May 2008 to 28 October 2009.
  - a. The member died as a result of an injury suffered on or after 10 June 1997 but before 1 July 2004.
  - b. The member was survived by any of these classes of people.
    - i. A person who would have met the definition of spouse in the *Safety, Rehabilitation and Compensation Act 1988* as in force after 1 July 2009, had it been in place at the time of the member's death.
    - ii. One or more dependent children, as defined in clause 4 of this Determination.
    - iii. Both a spouse and one or more dependent children.
  - c. Compensation in respect of the injury is payable to, or for the benefit of, the spouse or one or more dependent children.

In this paragraph **compensation** means compensation payable under subsection 17 (3) or (4), or section 24 or 27, of the *Safety, Rehabilitation and Compensation Act 1988*.
2. The spouse may be entitled to a payment.

3. The amount of the payment is the amount described in paragraph a less the amount described in paragraph b.

a. The sum of the following amounts.

i. An amount prescribed in the following table, in relation to the date of the former member's death.

Item	If the former member died during the period...	then the amount is...
1.	13 May 2008 to 30 June 2008	\$44,160.58
2.	1 July 2008 to 30 June 2008	\$45,485.40
3.	1 July 2009 to 28 October 2009	\$47,395.78

ii. An amount described in the following table, for each dependent child.

Item	If the former member died during the period...	then the amount is...
1.	13 May 2008 to 30 June 2008	\$65,796.06
2.	1 July 2008 to 30 June 2008	\$67,769.94
3.	1 July 2009 to 28 October 2009	\$70,277.43

b. An additional death benefit paid to the spouse under clause 11.2.9 of the Principal Determination.

**Example1:** A member died on 1 August 2009, leaving a spouse. The member met the requirements of paragraph 11.2.8.1 of the Principal Determination. The calculation of the payment is as follows.

Paragraph a.i	The member died on 1 August 2009. The amount prescribed in paragraph a.i is \$47,395.78.
Paragraph a.ii	The member left no children. The amount under paragraph a.ii is zero.
Paragraph a total	\$47,395.78 plus zero is \$47,395.78

Paragraph b	No additional death benefit was paid under clause 11.2.9 of the Principal Determination. The formula in that clause did not provide for a payment.
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Payment total	The spouse is entitled to the paragraph a total minus the paragraph b amount. That is \$47,395.78 minus zero.  The amount of the payment is \$47,395.78.
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**Example 2:** A member died on 1 June 2008, leaving a spouse and two children. The member met the requirements of paragraph 11.2.8.1 of the Principal Determination. The calculation of the payment is as follows.

Paragraph a.i	The member died on 1 June 2008. The amount prescribed in paragraph a.i is \$44,160.58.
Paragraph a.ii	The member left two children. The amount under paragraph a.ii is \$65,796.06 for each child. Two multiplied by \$65,796.06 equals \$131,592.12.
Paragraph a total	\$44,160.58 plus \$131,592.12 is \$175,752.70

Paragraph b	An additional death benefit of \$44,160.58 was paid under clause 11.2.9 of the Principal Determination in respect of the spouse.  An amount of \$65,796.06 was paid in respect of each child.  The total amount paid under clause 11.2.9 was \$175,752.70.
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Payment total	The spouse is entitled to the paragraph a total minus the paragraph b amount. That is \$175,752.70 minus \$175,752.70.  The spouse is not entitled to a payment under this clause.
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**NOTE**

1. Defence Determination 2005/15 commenced on 31 May 2005. For previous amendments see Note to Defence Determination 2009/1 and see also Defence Determinations 2009/2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69.



# EXPLANATORY STATEMENT

## Defence Determination 2009/70

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 11 of the Principal Determination sets out provisions dealing with additional military compensation for members of the Australian Defence Force (ADF).

The purpose of this Determination is to implement changes to military compensation payments associated with the passage of the *Employment and Workplace Relations Amendment Act 2009*.

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 29 October 2009.

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

Clause 4 substitutes the definition of dependent child in clause 11.2.5 of the Principal Determination. The new definition cross refers to the basic child definitions in clause 1.3.75 of the Principal Determination, and continues to require economic dependency.

Clause 5 substitutes the definition of spouse in clause 11.2.5 of the Principal Determination. The new definition incorporates that used in the *Safety, Rehabilitation and Compensation Act 1988*. That meaning includes a de facto partner, whether of the same or opposite sex.

Clause 6 substitutes clause 11.2.9 of the Principal Determination, which provides for the payment of an additional death benefit. The additional benefit was recently effectively reduced to zero, by a retrospective change to one of the figures in the formula through the implementation of the *Employment and Workplace Relations Amendment Act 2009*. The new clause restores the additional death benefit, and prescribes a figure rather than a formula. The amount is to the amount that existed before changes made to figures in the formula, plus indexation.

Clause 7 substitutes subclause 11.2.12.1 of the Principal Determination, which sets the amount of severe injury adjustment. The subclause formerly provided a formula for calculating the amount of the benefit, and this has been replaced by a prescribed amount. The new subclause will be easier for the reader to use. The amount of the benefit paid has not changed, but the figure has been updated to reflect indexation changes in accordance with clause 11.2.27 of the Principal Determination.

Clause 8 amends subclause 11.2.12.2 of the Principal Determination, which provides a severe injury adjustment to dependent children of the member. The figure has been adjusted, consistent with the indexation arrangements provided under clause 11.2.27 of the Principal Determination.

Clause 9 substitutes subclause 11.2.14.3 of the Principal Determination, which provides a severe injury adjustment interim payment. The subclause formerly provided a formula for calculating the amount of the benefit, and this has been replaced by a prescribed amount. The new subclause will be easier for the reader to use. The amount of the benefit paid has not changed, but the figure has been updated to reflect indexation changes in accordance with clause 11.2.27 of the Principal Determination.

Clause 10 amends a figure in subclause 11.2.26.1 of the Principal Determination. This subclause provides a payment for the cost of professional financial advice to recipients of an additional death benefit or severe injury adjustment. The figure has been adjusted, consistent with the indexation arrangements provided under clause 11.2.27 of the Principal Determination.

Clause 11 substitutes clause 11.2.27 of the Principal Determination. Clause 11.2.27 sets out arrangements for indexation of the amounts contained in Chapter 11 Part 2 of the Principal Determination. The clause formerly operated to ensure that amounts were varied in line with the Consumer Price Index. Following changes to the *Safety, Rehabilitation and Compensation Act 1988*, and to be consistent with it, the clause has been amended so that the additional death benefit for a spouse is varied in line with the Wage Price Index.

Clause 12 is a transitional clause. The retrospective increase in the amount of benefit payable on death under the *Safety, Rehabilitation and Compensation Act 1988* meant that the formula given for calculating the amount of additional death benefit under the Principal Determination did not give an entitlement. This clause provides a payment to any person affected by this anomaly.

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*