Defence (Employer Support Payments) Amendment Determination 2007 (No. 1)

Defence Act 1903

I, PETER LINDSAY, Parliamentary Secretary to the Minister for Defence, make this Determination under subsection 58B (1) of the Defence Act 1903.

Dated 12 September 2007

Parliamentary Secretary to the Minister for Defence

1 Name of Determination

This Determination is the Defence (Employer Support Payments) Amendment Determination 2007 (No. 1).

2 Commencement

This Determination commences on 15 October 2007.

3 Amendment of Defence (Employer Support Payments) Determination 2005

Schedule 1 Amendments

Schedule 1 Amendments

(section 3)

[1] Section 3, after definition of Act
insert
Assistant Director means the person nominated under paragraph 3AA (2) (b) to be the Assistant Director, Australian Defence Force Reserves Employer Support Payment Scheme.

[2] Section 3, definition of civil practice support allowance
omit

[3] Section 3, definition of Defence Determination 2000/1
omit

[4] Section 3, definition of Director ESP Scheme
substitute
Deputy Director means the person nominated under paragraph 3AA (2) (a) to be the Deputy Director, Australian Defence Force Reserves Employer Support Payment Scheme.

Director means the person nominated under subsection 3AA (1) to be the Director, Australian Defence Force Reserves Employer Support Payment Scheme.

[5] Section 3, after definition of employment
insert
ESP Scheme means Australian Defence Force Reserves Employer Support Payment Scheme.

[6] Section 3, definition of Reserve medical officer
omit

[7] Section 3, after definition of service chief
insert
sessional fee means the compensation known as legal officer sessional fee to which a legal officer who is a member of the Reserves may be entitled.
[8] After section 3

insert

3AA Nomination of Director etc of ESP Scheme

Nomination of Director

(1) The Director, Australian Defence Force Reserves Employer Support Payment Scheme may be:
(a) appointed by a person at the appropriate level; or
(b) nominated by the Assistant Chief of the Defence Force (Reserves).

Nomination of Deputy Director or Assistant Director

(2) A person may be appointed by a person at the appropriate level, or nominated by the Assistant Chief of the Defence Force (Reserves), to be:
(a) a Deputy Director, Australian Defence Force Reserves Employer Support Payment Scheme; or
(b) an Assistant Director, Australian Defence Force Reserves Employer Support Payment Scheme.

(3) A person nominated as a Deputy Director or an Assistant Director must not be below the rank of:
(a) for an officer in the Australian Navy — Lieutenant Commander; or
(b) for an officer in the Australian Army — Major; or
(c) for an officer in the Australian Air Force — Squadron Leader; or
(d) for an APS employee — APS Level 6.

[9] After subsection 3B (1)

insert

(1A) A business or company mentioned in subsection (1) must not be:
(a) the investment of accumulated wealth; or
(b) investment in a superannuation fund; or
(c) a hobby.
3BA Director may issue certificate

(1) If the Director has considered material or information in relation to a member's claim under section 3B, and is satisfied that the material or information substantiates the member's claim, the Director may issue a certificate in accordance with this section.

(2) A certificate issued under subsection (1) must:
   (a) state that a member has provided material or information in relation to a member's claim; and
   (b) state that the Director considers that the information or material substantiates the member's claim; and
   (c) mention the date of the claim; and
   (d) mention such key facts and conclusions as the Director considers relevant for the certificate.

(3) A certificate mentioned in subsection (1) that is presented:
   (a) to a decision-maker other than the Director; and
   (b) by the member in relation to whom the certificate was issued; and
   (c) in relation to a subsequent claim by the member;
   must be taken by the decision-maker as conclusively establishing, for the subsequent claim, any key facts and conclusions mentioned in paragraph (2) (d).

(4) Nothing in subsection (3) prevents a decision-maker from making an enquiry to establish the existence of the facts that support a member's claim.

(5) A certificate mentioned in subsection (1) expires on the occurrence on any of the following:
   (a) if the Director mentions an expiry day in the certificate — that day;
   (b) if, after the issue of the certificate, the member has a break of continuous defence service that is greater than 6 months — at the end of 6 months after the break of service commenced;
   (c) for a self-employed member — at the end of the period of 3 years mentioned in subsection 3B (6) that applies to any of the key facts mentioned in paragraph (2) (d).

(6) Nothing in subsection (5) prevents the Director from revoking a certificate at any time if the Director is no longer satisfied under subsection (1).
[11] Subparagraph 3C (3) (a) (I)

after
at least
insert
the previous

[12] Subsections 3C (9) and (10)

substitute

(9) If the Director, Deputy Director or Assistant Director approves an application, he or she must, within 7 days after the decision is made, give the claimant written notice of:

(a) the decision; and
(b) the period during which the claimant can rely upon the decision; and
(c) any limitations or restrictions that apply to the decision; and
(d) the claimant’s right:
   (i) if the Director made the decision — to have the decision reviewed by the AAT; or
   (ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

(10) If the Director, Deputy Director or Assistant Director refuses an application, he or she must, within 7 days after the decision is made, give the claimant written notice of:

(a) the decision; and
(b) the reasons for refusing to approve the application; and
(c) the claimant’s right:
   (i) if the Director made the decision — to have the decision reviewed by the AAT; or
   (ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.
[18] After subsection 7B (10)

Insert

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

[19] Subsection 9 (4A), at the foot

Insert

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

[20] After subsection 9 (4A)

Insert

(4B) If the Director, Deputy Director or Assistant Director rejects a late claim under subsection (4A), he or she must, within 7 days after the decision is made, give the claimant written notice of:

(a) the decision; and

(b) the reasons for rejecting the claim; and

(c) the claimant’s right:

(i) if the Director made the decision — to have the decision reviewed by the AAT; or

(ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

(4C) For the avoidance of doubt, a claim may be rejected under subsection (4A) solely on the grounds that it is late.

[21] Paragraph 9 (5) (c)

Omit

(6A) or (6B)

Insert

(7) or (9)

[22] Subsections 9 (6A), (6B) and (7)

Substitute

(7) The decision-maker:

(a) may refer a claim to the Director for advice on any matter relating to the claim; and
(b) is not required to act in accordance with the Director's advice.

(8) If the decision-maker refuses to approve a claim, he or she must, within 7 days after the decision is made, give the claimant written notice of the decision, including:
   (a) the reasons for refusing to approve the claim; and
   (b) a statement that the claimant may request reconsideration of the decision under section 15D.

Claim may be referred to Director for decision

(9) The decision-maker may refer a claim to the Director for the Director, a Deputy Director or an Assistant Director to make a decision on the claim.

(10) The Director, Deputy Director or Assistant Director may ask, in writing, the claimant to give him or her further information about a claim:
   (a) forwarded under subsection (5A); or
   (b) referred under subsection (7) or (9).

(11) If the Director, Deputy Director or Assistant Director asks the claimant to give him or her further information under subsection (10):
   (a) the claimant must provide the information within 30 days after the day on which the request was made; and
   (b) he or she must not approve, or refuse to approve, the application or claim until the earlier of the following days:
      (i) the day he or she receives the information;
      (ii) the day after the period mentioned in paragraph (a) expires.

(12) Subject to subsection (11), the Director, Deputy Director or Assistant Director must:
   (a) accept the claim; or
   (b) reject the claim.

(13) If the Director, Deputy Director or Assistant Director rejects a claim under subsection (12), he or she must, within 7 days after the decision is made, give the claimant written notice of:
   (a) the decision; and
   (b) the reasons for rejecting the claim; and
   (c) the claimant's right:
      (i) if the Director made the decision — to have the decision reviewed by the AAT; or
(ii) if a Deputy Director or an Assistant Director made the
decision — to have the decision reconsidered by the Director
under section 15D.

Note Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must
not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or
APS Level 6, as the case may be.

[23] Section 10
omit

[24] Subsection 12 (1), example
substitute
Example
If, in a financial year, an employee in full-time work is absent on defence service for
3 periods of 5 continuous days, his or her employer will not be entitled to an employer
support payment for the first 2 weeks (the qualifying period for sections 4 and 7). The
claim period will start on the 11th day of absence (the beginning of the 3rd week), and the
employer or self-employed member will be entitled to an amount of employer support
payment that is equivalent to the weekly rate of the employer support payment.

[25] Section 15, heading
substitute
15 Application or claim for additional amount of employer support
payment

[26] Paragraph 15 (1) (c)
omit

[27] Paragraph 15 (1) (d)
omit
under the Defence Determination 2000/1

[28] Paragraph 15 (4) (b)
substitute
(b) he or she must not approve, or refuse to approve, the application or
claim until the earlier of:
(i) the day he or she receives the information; and
(ii) the day after the period mentioned in paragraph (a) expires.
[29] **Paragraph 15 (6) (c)**

*omit*

the *Defence Determination 2000/1*

*insert*

any other Determination made under section 58B of the Act

[30] **After subsection 15 (7)**

*insert*

(8) If the Director, Deputy Director or Assistant Director rejects an application or claim for an additional amount under subparagraph (3) (a) (ii), he or she must, within 7 days after the decision is made, give the claimant written notice of:

(a) the decision; and

(b) the reasons for rejecting the application or claim; and

(c) the claimant’s right:

(i) if the Director made the decision — to have the decision reviewed by the AAT; or

(ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

*Note* Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

[31] **Subparagraph 15A (1) (a) (ii)**

*omit*

[32] **Subparagraph 15A (1) (a) (iii)**

*omit*

under the *Defence Determination 2000/1*

[33] **Section 15C, heading**

*substitute*

15C Application or claim for supplementary amount of employer support payment
[34] **Paragraph 15C (5) (b)**

substitute

(b) he or she must not approve, or refuse to approve, the application or claim until the earlier of:

(i) the day he or she receives the information; and

(ii) the day after the period mentioned in paragraph (a) expires.

[35] **After subsection 15C (7)**

insert

(8) If the Director, Deputy Director or Assistant Director rejects an application or claim for a supplementary amount under subsection (4), he or she must, within 7 days after the decision is made, give the claimant written notice of:

(a) the decision; and

(b) the reasons for rejecting the application or claim; and

(c) the claimant’s right:

(i) if the Director made the decision — to have the decision reviewed by the AAT; or

(ii) if a Deputy Director or an Assistant Director made the decision — to have the decision reconsidered by the Director under section 15D.

*Note* Subsection 3AA (3) provides that a Deputy Director or an Assistant Director must not be below the rank of Lieutenant Commander in the Australian Navy, or equivalent, or APS Level 6, as the case may be.

[36] **After section 15C**

insert

15D **Reconsideration of decisions**

(1) This section applies if an applicant or claimant (the *affected person*) is dissatisfied with a decision under a provision mentioned in an item in the following table made by:

(a) a Deputy Director; or

(b) an Assistant Director; or

(c) a decision-maker.

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*Defence (Employer Support Payments) Amendment Determination 2007 (No. 1)*
(2) The affected person may, by notice in writing to the Director, request the Director to reconsider the decision relating to:

(a) the application or claim; and

(b) the statement of reasons for the decision to:

(i) reject or refuse to approve the application or claim; or

(ii) impose conditions or limitations.

(3) The affected person must give the request for reconsideration to the Director within:

(a) 30 days after the day on which the affected person first receives notice of the decision; or

(b) any further period that the Director allows.

(4) The affected person must set out in the request the reasons for the reconsideration.

(5) The Director may ask, in writing, the affected person to give him or her further information about the application or claim.

(6) If the Director asks the affected person to give him or her further information under subsection (5):

(a) the affected person must give the Director the information within 30 days after the day on which the request was made; and

(b) the Director must not approve, or refuse to approve, the application or claim until the earlier of the following days:

(i) the day the Director receives the information;

(ii) the day after the period mentioned in paragraph (a) expires.

(7) The Director must reconsider the application or claim and the decision to refuse to approve the application or claim and must, in writing:

(a) confirm the decision; or

(b) substitute a new decision.

[37] After paragraph 16 (a)

insert

(ab) a decision to set a period, or impose limitations or restrictions, under subsection 3C (9);
[38] Paragraph 16 (c)

substitute
(c) a decision by the Director under subsection 9 (4A) to reject a late claim;

[39] Paragraph 16 (ca)

omit
subsection 9 (6B);
insert
paragraph 9 (12) (b);

[40] Paragraph 16 (d)

omit

[41] Paragraph 16 (g)

substitute
(g) a decision under subsection 15C (4);
(h) a decision to confirm or substitute a decision under subsection 15D (7).

[42] Paragraph 17 (2) (c)

substitute
(c) Squadron Leader; or
(d) APS Level 6.

[43] Further amendments

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## Schedule 1 Amendments

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<td>subsection 15C (6)</td>
<td>Director ESP Scheme approves the claim.</td>
<td>application or claim is approved.</td>
</tr>
<tr>
<td>section 16</td>
<td>Director ESP Scheme:</td>
<td>Director:</td>
</tr>
</tbody>
</table>