Defence Determination 1998/8

I, NICHOLAS JEFFERSON FORD, Director General Financial Conditions, Defence Personnel Executive, Department of Defence, acting under a delegation made by the Minister for Workplace Relations and Small Business under regulation 72A of the Defence Force Regulations, make the following Determination under section 58B of the Defence Act 1903.

Dated 1 March 1998

N.J. FORD
Air Commodore
Director General Financial Conditions
Defence Personnel Executive
Department of Defence
1. **Citation**
1.1 This Determination may be cited as Defence Determination 1998/8.

2. **Commencement**
2.1 This Determination is to be taken to have commenced on 11 February 1998.

3. **Amendment**
3.1 Defence Determination 1998/4 is amended as set out in this Determination.

4. **Clause 3 (Definitions)**
4.1 Definition of “agreement”:
Omit the definition.

4.2 Definition of “eligible member”, paragraph (b):
Before “full-time service”, insert “continuous”.

4.3 Definition of “eligible member”, paragraph (d):
Omit the paragraph, substitute:

“(d) is otherwise suitable for continued service because of the member’s efficiency and competence;”.

4.4 Definition of “eligible member”, paragraph (e):
Omit the paragraph, substitute:

“(e) receives an offer; and”.

4.5 Definition of “eligible member”, paragraph (f):
Omit “makes an agreement”, substitute “acknowledges the offer”.

4.6 After the definition of “eligible member”, insert:

“‘offer’, in relation to an eligible member, means an offer in writing to the member which:

(a) offers a completion bonus of the amount and on the conditions specified in clause 5;

(b) sets out the required period of service stipulated by the CDF in relation to the member; and

(c) is acknowledged in writing by the member;”.

4.7 Definition of “period of prospective service”:
Omit the definition, substitute:

“‘period of prospective service’, in relation to an eligible member, means a
period of service ending on the day specified in an undertaking given by the
member under subsection 33(3) of the Military Superannuation and
Benefits Act 1991 when the member elects to receive a retention benefit
under Part 8 of that Act;”.

4.8 Definition of “relevant day”:
Omit “makes an agreement”, substitute “acknowledges an offer”.

4.9 Definition of “required period of service”, paragraph (b):
Omit “the agreement made”, substitute “the offer acknowledged”.

4.10 Definition of “return of service obligation”:
Omit the definition.

5. New clause 3A
5.1 After clause 3, insert:

Return of service obligation

“3A.1 For the purposes of this Determination, an eligible member is subject to a return
of service obligation if:

(a) the member:

(i) is engaged in, or has completed, a course of training, a period of
employment on special duties or a period of service outside
Australia; or

(ii) was appointed outside Australia and the member’s transport, or the
member’s family’s transport, to Australia was at the expense of the
Commonwealth; and

(b) because of the member’s being, or having been, engaged as described in
subparagraph 3A.1(a)(i), or having been appointed outside Australia as
described in subparagraph 3A.1(a)(ii), the member is required to complete a
period of service determined by the Chief of Navy, Chief of Army or Chief
of Air Force (as the case may be).”.

6. Clause 4 (Prescribed amount)
6.1 Omit “makes an agreement”, substitutes “acknowledges an offer”.

6.2 Omit “the agreement” (twice occurring), substitute “the offer”.
7. **Clause 5 (Completion bonus)**

   7.1 Omit “if the member completes a period”, substitute “if the member remains an eligible member during, and completes, a period”.

   7.2 Omit “the agreement made”, substitute “the offer acknowledged”.

8. **Clause 6 (Pro-rata payment in certain circumstances)**

   8.1 Paragraph 6.1(b):
   Omit “for reasons that (in the opinion of the CDF) are not within the member’s control;”, substitute “as a result of physical or mental incapacity that is not within the member’s power to control;”.

   8.2 Paragraph 6.1(c):
   Before “full-time service”, insert “continuous”.

   8.3 Paragraph 6.1(c):
   Omit “that (in the opinion of the CDF) are not within the member’s control;”, substitute “that are not within the member’s power to control;”.

   8.4 Omit “Number of days’ effective service”, substitute “Number of days effective service”.

9. **Schedule (Required periods of service and prescribed amounts)**

   9.1 Heading of column 1:
   Omit “agreements”, substitute “offers”.


EXPLANATORY STATEMENT

Defence Determination 1998/8

Defence Act 1903

Defence Determination 1998/4 of 11 February 1998 (the Principal Determination) implemented a bonus scheme to provide for the retention of qualified and experienced Medical Officers and Dental Officers in the Defence Force.

The scheme involved making agreements with the relevant members to render a required period of service in order to qualify for the specified amount of bonus.

As a result of reconsideration of some aspects of the scheme, this Determination amends the Principal Determination by omitting references to agreements, and substituting the concept of offers which are acknowledged by members in writing. This avoids any possibility that reliance on agreements to render service could affect the validity of the Principal Determination through technical inconsistency with the obligation to render service imposed on members of the Permanent Forces by the Defence Act 1903 and other primary Defence legislation.

The opportunity is also taken to amend the Principal Determination by substituting clear, stand-alone definitions for two definitions relying on other legislation; and by providing objective tests instead of a decision-maker’s opinion for certain provisions affecting eligibility for benefits.

While not substantively altering the effect of the Principal Determination, the amendments provide consistency with the drafting approach taken in a later Determination authorising a completion bonus for Aircrew Observers in the Navy (Defence Determination 1998/7). For the avoidance of doubt, clause 2 of this Determination provides for the amendments to commence on the same day as the Principal Determination (11 February 1998).

Clause 4 of this Determination amends the definitions in the Principal Determination as follows:

- the definition of “agreement” is omitted, and a new definition of “offer” is inserted in similar terms;
- the definition of “eligible member” is amended by making a minor change to a reference to service, substituting an objective test of suitability for continued service, and substituting references to an offer for references to an agreement;
- a stand-alone definition of “period of prospective service” is substituted for a
definition with the same effect that relied on the *Military Superannuation and Benefits Act 1991*; and

- the definitions of “relevant day” and “required period of service” are amended by substituting references to an offer for references to an agreement.

Clause 5 inserts a new stand-alone interpretation of “return of service obligation”, replacing a definition with the same effect that relied on the *Military Superannuation and Benefits Act 1991*. The interpretation is based on a similar provision in Part 8 of that Act.

Clause 6 amends a provision establishing the amount of bonus, by substituting references to an offer for references to an agreement.

Clause 7 amends a provision setting out the main condition for entitlement to the bonus, namely completion of the required period of service. The amendment makes it clear that a member must remain an eligible member during that period in order to qualify. The amendment also substitutes a reference to an offer for a reference to an agreement.

Clause 8 amends a provision authorising a pro-rata entitlement for members who are unable to complete the required period of service in certain limited circumstances. The amendments substitute objective tests in relation to medical incapacity and the curtailment of service in the Permanent Forces by a Reserve Medical Officer or Dental Officer. The opportunity is taken to make a minor amendment to a reference to service and correct an aspect of typography.

Clause 9 substitutes a reference to offers for a reference to agreements.

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*