Defence Determination 1998/22

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 12 June 1998

N.J. FORD
Air Commodore
Director General Financial Conditions
Defence Personnel Executive
Department of Defence

[ref143]
1. **Citation**
1.1 This Determination may be cited as Defence Determination 1998/22, Leave Without Pay (Amendment).

[NOTE: This Determination commences on the day on which it is made - see Defence Act 1903, subsection 58B(4).]

2. **Amendment**
2.1 Determination 2608, Leave Without Pay, as amended¹, is amended as set out in this Determination.

3. **Definitions**
3.1 Definition of “allowance”:
Omit the definition.

3.2 Definition of “salary”:
Omit the definition.

4. **New clause 3**
4.1 After clause 2, insert:

**Method for pro-rata variation of entitlements during part-time leave without pay**

“3. A reference in this Determination to reducing or increasing an entitlement on a pro-rata basis, in relation to a member who is granted part-time leave without pay, is a reference to reducing or increasing the entitlement by a percentage rate calculated under the formula:

\[
\text{Number of days PTLWOP} \times \frac{100}{10}
\]

where ‘number of days PTLWOP’ means the number of days on which the member is absent on such leave without pay in a pay period.”.

5. **New clause 6B**
5.1 After clause 6A, insert:

**Part-time leave without pay**

“6B.1 The Chief of the Defence Force may grant leave without pay to a member under clause 6 by way of part-time leave without pay, if the member:

(a) is rendering service in Australia; and

(b) has completed an initial period of continuous full-time service comprising the sum of:
(i) initial recruit and specialist training;

(ii) service rendered in discharging any return of service obligation arising from that training; and

(iii) any further period of service that the Chief of the Defence Force considers necessary in order to consolidate that training through exposure to the normal working routine for the member’s specialisation, having regard to the factors set out in subclause 6B.2.

“6B.2 The factors for the purpose of subparagraph 6B.1(b)(iii) are:

(a) the nature of the member’s specialisation and the duties normally performed by the member;

(b) the period required by members generally in that specialisation to consolidate initial recruit and specialist training;

(c) the member’s progress in the specialisation since undertaking that training; and

(d) any other factor relevant to the member’s performance of duties in the specialisation.

“6B.3 If the Chief of the Defence Force grants part-time leave without pay to a member, the Chief of the Defence Force is to specify in the approval:

(a) the dates on which the period of leave is to begin and end; and

(b) the days or parts of days on which leave is granted in each pay period during the period of leave.

“6B.4 In spite of paragraph 6B.3(b), a member who is on part-time leave without pay may be required to perform periods of duty additional to the periods that the member normally performs during the period of leave.

“6B.5 The Chief of the Defence Force may not grant part-time leave without pay to a member for:

(a) less than 3 months; or

(b) for a period equal to (or periods the sum of which is equal to) less than 1 day or more than 13 days in each pay period during the period of leave.
“6B.6 Leave without pay granted on parts of days in each pay period must equate in aggregate to 1 or more whole days’ leave, based on the normal working hours for members generally at the place where the member normally performs duty.

“6B.7 A period of part-time leave without pay does not break continuity of service.”.

6. Clause 8 (Allowances not payable - leave without pay other than part-time leave without pay)
6.1 Omit the clause.

7. Clause 9 (Allowances not payable - leave without pay other than part-time leave without pay)
7.1 Insert at the beginning “Subject to this Determination,”.

7.2 After “a period of leave without pay”, insert “(other than part-time leave without pay)”.

8. New clauses 11, 12 and 13
8.1 Add at the end:

Entitlements during part-time leave without pay

“11. A member who is granted part-time leave without pay is entitled to an allowance (including reimbursement for expenses incurred by the member) and liable to pay a contribution to the Commonwealth under a determination made under section 58B of the Defence Act 1903 during any period of such leave without pay:

(a) in the case of:

   (i) a charge for rations and quarters;

   (ii) Living Out Allowance;

   (iii) Temporary Accommodation Allowance; or

   (iv) Temporary Rental Allowance -

as provided in the determination authorising the charge or the allowance;

(b) in the case of Uniform Maintenance Allowance - on the condition that the member’s entitlement is to be reduced on a pro-rata basis; and

(c) in the case of any other contribution or allowance - at the rate for which the member would be liable, or to which the member would be entitled, if the member were not on part-time leave without pay.
Part-time leave without pay - effect on other forms of leave

“12.1 The rate at which basic recreation leave under clauses 5, 6, 7, 8 and 9 of Determination 2601, Recreation Leave, is credited to a member in relation to a period of part-time leave without pay is to be reduced on a pro-rata basis.

“12.2 If a member:

(a) was on part-time leave without pay for a period immediately before a period of maternity leave; and

(b) would have continued on part-time leave without pay for a further period but for the grant of maternity leave during that further period,

then:

(c) any salary to which the member is entitled during that further period under Determination 2604, Maternity Leave, is to be reduced as if the member had continued on the same part-time leave without pay until the date on which the part-time leave without pay would otherwise have ended; and

(d) any recreation leave of a kind which is specified in subclause 12.1 and with which the member would, but for this paragraph, be credited for service rendered during that further period is to be reduced under that subclause as if the member had continued on the same part-time leave without pay until that date.

Part-time leave without pay - pro-rata increase in time after which increment of salary is payable

“13. For the purposes of subclause 12.1 of Determination 101, Increments and related matters, the reference in that subclause to 1 year, in relation to a period during which a member is granted part-time leave without pay, is a reference to 1 year increased on a pro-rata basis.”.

__________________________________________________________________

NOTE

1. Determination 2608, as amended to date. For previous amendments see Note to Determination No. 31 of 1995 and see also Determination No. 31 of 1995.
EXPLANATORY STATEMENT

Defence Determination 1998/22

Defence Act 1903

This Determination amends Determination 2608, Leave Without Pay (the Principal Determination), by inserting provisions authorising part-time leave without pay for members of the Australian Defence Force (ADF), and the conditions under which such leave may be granted.

Part-time leave without pay is the ADF equivalent of the part-time employment arrangements provided for in civilian areas of Commonwealth employment. The ADF concept is consistent with the obligation to render continuous full-time service imposed on members of the Permanent Forces by primary Defence legislation.

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

Clause 2 specifies the Determination that is amended by this Determination.

Clause 3 omits definitions of terms which are now included in Defence Determination 1991/45 (general definitions and interpretation) for use with determinations made under section 58B of the Defence Act 1903 (the Act).

Clause 4 sets out the interpretation of references in the new provisions to the pro-rata variation of certain entitlements during part-time leave without pay. The entitlements are to be reduced or increased (as the case requires) by a percentage rate calculated under a formula which takes account of the ratio of the number of days’ absence on such leave in a fortnightly pay period to 10 days, the number of standard working days (excluding weekends).

Clause 5 inserts a provision dealing with the granting of part-time leave without pay to members (defined in the Principal Determination as members rendering continuous full-time service), by:

- authorising the Chief of the Defence Force (CDF) to grant part-time leave without pay to a member rendering service in Australia after a specified period of initial full-time service (including a discretionary period of service that the CDF considers necessary in order to consolidate initial training);
• requiring the CDF to specify the overall period of part-time leave without pay and the days or part-days on which leave is granted in each pay period;

• providing for a member to be required to perform periods of duty additional to the periods that the member normally performs during a period of part-time leave without pay;

• specifying a minimum period of part-time leave without pay and the minimum and maximum days’ leave permitted in each fortnightly pay period;

• providing that part-days of part-time leave without pay in each pay period must equate in the aggregate to whole days; and

• providing for the effect of such leave on the continuity of members’ service.

The provision inserted by clause 5 operates under clause 6 of the Principal Determination, which authorises the granting of leave without pay in general; sets out the standard criteria under which the discretion to grant any form of leave without pay is to be exercised; and places an upper limit of 2 years on the period for which leave without pay may be granted for general purposes.

Clause 6 omits a redundant provision dealing with the effect of leave without pay on members’ entitlement to salary. This is now provided for in Determination No. 6 of 1992, Salaries, made by the Defence Force Remuneration Tribunal under section 58H of the Act.

Clause 7 amends a provision dealing with entitlement to certain allowances during full-time leave without pay. The amendment explicitly excludes consideration of members on part-time leave without pay under that provision.

Clause 8 inserts provisions setting out the effect of part-time leave without pay on members’ entitlements, as follows:

• new clause 11 deals with the effect on allowances and member contributions authorised under determinations made under section 58B of the Act;

• new clause 12 provides for the rate of accrual of basic recreation leave to be reduced on a pro-rata basis; in relation to paid maternity leave, the clause provides for pro-rata reduction of salary and pro-rata reduction of the rate of recreation leave accrual during a period of such leave that would otherwise have been a period of part-time leave without pay; and

• new clause 13 deals with the effect on service for the purposes of incremental advancement.
Criteria are provided for the exercise of discretions, and adverse decisions are subject to grievance procedures including appeal to the Defence Force Ombudsman.

This Determination commences on the day on which it is made, as provided by subsection 58B(4) of the Act.

Authority: Section 58B of the *Defence Act 1903*