Defence Determination 1998/34

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

Dated 31 August 1998

N.J. FORD
Air Commodore
Director General Financial Conditions
Defence Personnel Executive
[ref149]
PART A – Preliminary

1. Citation
1.1 This Determination may be cited as Defence Determination 1998/34, Leave without pay and other amendments.

2. Commencement

[NOTE: The remaining provisions of this Determination commence on the day on which this Determination is made: see Defence Act 1903, subsection 58B(4).]

PART B – Amendment of Determination 0301

3. Amendment
3.1 Determination 0301, District Allowance, as amended\(^1\), is amended as set out in this Part.

4. Clause 2 (Definitions)
4.1 Definition of “living in”:
Omit the definition.

4.2 Definition of “living out”:
Omit the definition.

PART C – Amendment of Determination 0307

5. Amendment
5.1 Determination 0307, Bindoon Allowance, as amended\(^2\), is amended as set out in this Part.

6. Clause 2 (Definitions)
6.1 Definition of “living out”:
Omit the definition.

PART D – Amendment of Determination 0402

7. Amendment
7.1 Determination 0402, Vehicle Allowance, as amended\(^3\), is amended as set out in this Part.

8. Clause 2 (Definitions)
8.1 Definition of “public transport”:
Omit the definition.

PART E – Amendment of Determination 0404
9. Amendment
9.1 Determination 0404, Isolated Establishment Allowance, as amended, is amended as set out in this Part.

10. Clause 2 (Definitions)
10.1 Definition of “Service accommodation”:
Omit the definition.

11. Clause 6 (Allowance not payable)
11.1 Omit “Service accommodation” (twice occurring), substitute “living-in accommodation”.

12. Clause 7A (Allowance not payable)
12.1 Omit “category MS member”, substitute “member with dependants (separated)”.

12.2 Omit “unless the member –”, substitute “, unless the member is entitled to Rent Allowance.”.

12.3 Paragraph 7A(a):
Omit the paragraph.

12.4 Paragraph 7A(b):
Omit the paragraph.

12.5 Paragraph 7A(c):
Omit the paragraph.

PART F – Amendment of Determination 0509

13. Amendment
13.1 Determination 0509, Dwelling Purchase or Sale Expenses Allowance, as amended, is amended as set out in this Part.

14. Clause 3 (Locality of posting – member posted to a seagoing ship)
14.1 Omit “family lives”, substitute “dependants live”.

15. Clause 3A (Locality of posting – member with dependants (separated))
15.1 Omit “Category MS member” (wherever occurring), substitute “member with dependants (separated)”.

15.2 Paragraph 3A(a):
Omit “family is”, substitute “dependants are”.

16. Clause 25 (Time limit on purchase of dwelling)
16.1 Paragraph 25(a):
Omit “Category MS member” (twice occurring), substitute “member with dependants (separated)”.

PART G – Amendment of Determination 1613

17. Amendment
17.1 Determination 1613, Accompanied Travel Within Australia, as amended, is amended as set out in this Part.

18. Clause 6 (Amount not payable)
18.1 Omit “family member”, substitute “dependant”.

PART H – Amendment of Determination 2608

19. Amendment
19.1 Determination 2608, Leave Without Pay, as amended, is amended as set out in this Part.

20. Clause 3 (Method for pro-rata variation of entitlements during part-time leave without pay)
20.1 Formula for calculating percentage rate:
Omit the formula, substitute:

\[ \frac{(\text{Number of days PTLWOP} - 4) \times 100}{10} \]

21. Clause 6B (Part-time leave without pay)
21.1 Subparagraph 6B.1(b)(iii):
Omit “subclause 6B.2.”, substitute “subclause 6B.2; and”.

21.2 Subclause 6B.1:
Add at the end:

“(c) is not rendering:

(i) a period of prospective service; or

(ii) a period of service that the member undertakes to render under a determination authorising the payment of a retention bonus to the member.”.

21.3 After subclause 6B.3, insert:

“6B.3A The Chief of the Defence Force may vary a date or the days specified in an approval under subclause 6B.3 in relation to a member’s period of part-time leave without pay, having regard
to the interests and views of the member and any other factor relevant to the circumstances in which the leave was granted.

“6B.3B In spite of paragraph 6B.3(a) and subclause 6B.3A, the Chief of the Defence Force may end a member’s period of part-time leave without pay if any of the following events occur:

(a) the member ceases to comply with a condition of eligibility applicable to the member under paragraph 6B.1(a) or 6B.1(c);

(b) in the opinion of the Chief of the Defence Force, a material change occurs in the circumstances on which the Chief of the Defence Force relied in granting the part-time leave without pay to the member; or

(c) the posting to which the grant of the member’s part-time leave without pay applies is terminated.”.

21.4 Paragraph 6B.5(a):
Insert at the beginning “a period of”.

21.5 Paragraph 6B.5(b):
Omit “for a period equal to (or periods the sum of which is equal to) less than 1 day”, substitute “less than 5 days”.

21.6 Paragraph 6B.5(b):
After “13 days”, insert “(or periods aggregating those numbers of days)”.

22. Clause 7 (Factors relevant to the grant of leave without pay)
22.1 After paragraph 7(c), insert:

“(ca) the nature and viability of any job-sharing arrangement that the member makes or proposes to make with another member;”.

23. Clause 11 (Entitlements during part-time leave without pay)
23.1 Paragraph 11(a):
Omit the paragraph, substitute:

“(a) in the case of:

(i) Temporary Accommodation Allowance;

(ii) a contribution for living-in accommodation or meals; or

(iii) Rent Allowance –

as provided in Defence Determination 1998/30, Housing Assistance;”.

24. New clause 14
24.1 Add at the end:

**Part-time leave without pay – pro-rata increase in time after which completion bonus is payable**

“14.1 For the purposes of a determination that establishes the entitlement of a member to a completion bonus if the member completes a required period of service, a reference in the determination to the required period of service, in relation to a period during which the member is granted part-time leave without pay, is a reference to the period increased on a pro-rata basis.

“14.2 In this clause, ‘required period of service’ has the same meaning as in the determination that establishes the entitlement to the completion bonus.”.

**PART I – Amendment of Defence Determination 1991/45**

25. **Amendment**
25.1 Defence Determination 1991/45, as amended, is amended as set out in this Part.

26. **Clause 3 (Meaning of certain words)**
26.1 Definition of “part-time leave without pay”:
Omit “a period of leave without pay equal to (or periods of such leave the sum of which is equal to) not less than 1 day and not more than 13 days of such leave”, substitute “leave without pay that is granted for not less than 5 days and not more than 13 days (or periods aggregating those numbers of days)”.

26.2 After the definition of “part-time leave without pay”, insert:

“‘period of prospective service’ has the same meaning as in Part 8 of the *Military Superannuation and Benefits Act 1991*.”.

26.3 Definition of “public transport”:
Omit “to convey”, substitute “for the purpose of transporting a member or dependants or conveying”.

27. **Clause 7 (Member with dependants (separated))**
27.1 Subparagraph 7.4(b)(iii):
Omit “education”, substitute “the education”.

**PART J – Amendment of Defence Determination 1995/26**

28. **Amendment**
28.1 Defence Determination 1995/26, as amended, is amended as set out in this Part.
29. **Clause 11 (Provision of residential accommodation)**
29.1 Paragraph 11(b):
Omit “the composition of the member’s family;”, substitute “the number, age, gender and circumstances of the member’s dependants;”.

**PART K – Amendment of Defence Determination 1996/32**

30. **Amendment**
30.1 Defence Determination 1996/32, as amended\(^{10}\), is amended as set out in this Part.

31. **Clause 5 (Disturbance Allowance)**
31.1 Paragraph 5.1(b):
Omit “family status”, substitute “status in relation to dependants”.

**PART L – Amendment of Defence Determination 1996/44**

32. **Amendment**
32.1 Defence Determination 1996/44, as amended\(^{11}\), is amended as set out in this Part.

33. **Clause 2 (Definition)**
33.1 Omit “Determination:”, substitute “Determination,”.
33.2 Omit “South Australia;”, substitute “South Australia.”.

**PART M – Amendment of Defence Determination 1998/3**

34. **Amendment**
34.1 Defence Determination 1998/3, as amended\(^{12}\), is amended as set out in this Part.

35. **Clause 1.3 (Definitions)**
35.1 Definition of “the Secretary”:
Omit the definition.

36. **Clause 5.2 (Notice of decisions)**
36.1 Subclause 5.2(2):
Omit “family”, substitute “dependants”.

**PART N – Amendment of Defence Determination 1998/4**

37. **Amendment**
37.1 Defence Determination 1998/4, as amended\(^{13}\), is amended as set out in this Part.
38. Clause 3A (Return of service obligation)
38.1 Omit the clause.

PART O – Amendment of Defence Determination 1998/7

39. Amendment
39.1 Defence Determination 1998/7 is amended as set out in this Part.

40. Clause 4 (Return of service obligation)
40.1 Subparagraph 4.1(a)(ii):
Omit “family’s”, substitute “dependants’”.

NOTES

1. Determination 0301, as amended to date. For previous amendments see Note to Determination No. 10 of 1998 and see also Determination Nos. 10, 25, 27 and 32 of 1998.

2. Determination 0307, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination Nos. 25 and 32 of 1998.

3. Determination 0402, as amended to date. For previous amendments see Note to Determination No. 25 of 1998 and see also Determination Nos. 25, 31 and 32 of 1998.

4. Determination 0404, as amended to date. For previous amendments see Note to Determination No. 11 of 1998 and see also Determination No. 11 of 1998.

5. Determination 0509, as amended to date. For previous amendments see Note to Determination No. 31 of 1998 and see also Determination No. 3 of 1998.

6. Determination 1613, as amended to date. For previous amendments see Note to Determination No. 32 of 1998 and see also Determination No. 32 of 1998.

7. Determination 2608, as amended to date. For previous amendments see Note to Determination No. 22 of 1998 and see also Determination Nos. 22 and 25 of 1998.

8. Defence Determination 1991/45, as amended to date. For previous amendments see Note to Determination No. 23 of 1998 and see also Determination Nos. 23, 31 and 32 of 1998.

9. Defence Determination 1995/26, as amended to date. For previous amendments see Note to Determination No. 16 of 1998 and see also Determination Nos. 16 and 31 of 1998.

10. Defence Determination 1996/32, as amended to date. For previous amendments see Note to Determination No. 32 of 1998 and see also Determination No. 32 of 1998.

11. Defence Determination 1996/44, as amended to date. For previous amendments see Note to Determination No. 32 of 1998 and see also Determination No. 32 of 1998.

12. Defence Determination 1998/3, as amended to date. For previous amendments see Note to Determination
No. 15 of 1998 and see also Determination No. 15 of 1998.

13. Defence Determination 1998/4, as amended to date. For previous amendments see Note to Determination No. 8 of 1998 and see also Determination No. 8 of 1998.
This Determination:

- amends Determination 2608, Leave Without Pay, in relation to certain aspects of part-time leave without pay for members of the Australian Defence Force (ADF);

- makes further consequential amendments stemming from the implementation of new housing assistance arrangements and related terminology by Defence Determinations (DD) 1998/30, 31 and 32 with effect from 3 September 1998; and

- makes minor corrections to other principal determinations made under section 58B of the Defence Act 1903 (the Act).

Part A deals with preliminary matters. It provides for all the amendments relating to housing assistance and members’ dependants to commence on 3 September 1998, the same day as DD 1998/30, 31 and 32. The remaining provisions of this Determination commence on the day on which this Determination is made, as provided by subsection 58B(4) of the Act.

Parts B to G (inclusive) and Parts J, K, N and O make minor amendments to nine principal determinations in relation to housing assistance and dependants, including deletion of definitions that are now to appear in DD 1991/45 (general definitions and interpretation) and the updating of obsolete terminology.

Clause 12 in Part E amends a provision of Determination 0404, Isolated Establishment Allowance, which provides that the allowance is not payable to a member who is recognised as separated from dependants for official purposes and who lives out (ie on the private accommodation market), unless the member qualifies for housing assistance. The amendment updates the terms used in the provision, and simplifies the description of the member’s qualification for housing assistance by relying instead on an entitlement to Rent Allowance (as authorised by DD 1998/30).

Part H amends Determination 2608 as follows:

- clause 20 amends a formula used in calculating the percentage rate by which aspects of certain entitlements are reduced or increased on a pro-rata basis for members who are granted part-time leave without pay under clause 6B of the Determination. Under subclause 6B.5 (as amended by subclause 21.5 – see below), such leave may not be granted for more than 13 days or less than 5 days of a 14-day pay period. These maximum and minimum limits include four weekend days which are included in any grant of part-time leave without pay, since eligible members are obliged to render continuous full-time service on the basis of a 14-day fortnight. However, in order to achieve the correct outcome for the purposes of this formula (which uses a
denominator of 10 based on the number of normal working days generally applicable to members in a pay period), it is also necessary to eliminate the 4 weekend days from the numerator (ie the number of days of part-time leave without pay granted to a member). The amendment implements this by subtracting 4 in all cases, equating to effective maximum and minimum limits of 9 working days and 1 working day respectively in a normal working fortnight;

- clause 21 amends a provision setting out the conditions on which the Chief of the Defence Force (CDF) may grant part-time leave without pay to a member. The amendments:
  - render ineligible any members who have obligations to serve resulting from commitments made in return for benefits under the *Military Superannuation and Benefits Act 1991* or retention bonuses;
  - authorise the CDF to vary the start and finish dates of a period of such leave, or the days on which a member is to be absent in each pay period, having regard to the member’s interests and views and other relevant circumstances;
  - authorise the CDF to end a period of such leave in certain specified situations relating to the member’s basic eligibility, a material change in the circumstances under which the leave was granted, or the termination of the posting to which the grant of leave applies; and
  - revise the terms of a provision imposing certain limitations on the CDF’s authority to grant such leave, and increase the minimum fortnightly period by adding the 4 weekend days in a pay period to the former minimum period of one day. This recognises the inclusion of 4 weekend days in all grants of such leave and maintains an effective minimum limit of 1 working day in a normal working fortnight;

- clause 22 inserts a criterion relevant to part-time leave without pay into a list of general criteria to which the CDF must have regard in granting any period of leave without pay;

- clause 23 amends references to certain housing-related allowances; and

- clause 24 inserts a provision increasing the period that a member must serve in order to qualify for a completion bonus on a pro-rata basis, in relation to a period of part-time leave without pay.

Part I amends DD 1991/45 (general definitions and interpretation) by:

- revising a definition of “part-time leave without pay” in line with the amendments made by subclauses 21.5 and 21.6;

- inserting a definition required for the amendment made by subclause 21.2; and

- making minor changes to two provisions relating to dependants.

Part L makes minor typographical amendments to a definition in DD 1996/44, which authorises an allowance for members at an establishment at Port Wakefield in South Australia.
Part M amends DD 1998/3, which provides additional compensation for members and their dependants in relation to death or serious injury in the course of ADF service. Clause 35 omits a definition of “the Secretary” as the Secretary to the Department of Defence. This definition was inserted by DD 1998/15 of 3 April 1998 in order to clarify the meaning of references to the Secretary, since at that time the Minister for Workplace Relations and Small Business was responsible for section 58B of the Act. As that responsibility was formally transferred to the Minister for Defence on 18 June 1998, the definition is no longer required. Part M also amends a reference to dependants.

Authority: Section 58B of the
Defence Act 1903