Defence Determination 2012/15, Deployment payment

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

Dated 8 March 2012

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

1. This Determination is Defence Determination 2012/15, Deployment payment.
2. This Determination may also be cited as Defence Determination 2012/15.

2 Commencement

This Determination commences on 19 March 2012.

3 Payment – transitional

1. This clause applies to a member who was assigned for duty that met both of the following conditions.
   a. The member was deployed with host nation units in support of United Nations Security Council Resolutions 1970 and 1973 – No Fly Zone and Maritime enforcement operations against Libya.
   b. The member was in either or both of the following areas in any part of the period 31 March 2011 to 31 October 2011.
      i. Libya.
      ii. International water and superjacent airspace of the central Southern Mediterranean Sea between Libya and its territorial waters and superjacent airspace between 10 degrees 00 minutes east longitude and 28 degrees 00 minutes east longitude and south of 41 degrees 00 minutes north latitude, including portions of Italy, Greece, Turkey, Albania and all of Malta, but excluding Libya and its territorial waters and superjacent airspace.

   Related Information: A map showing these areas is in the Attachment. In the map Libya is shown as Zone A, and the area described by subparagraph b.ii is shown as Zone B.

2. The member is to be paid an amount calculated using the following rules.
   a. The payment is the sum of amounts described in subclauses 3 and 4.
   b. For any day the member is entitled to a payment under both subclause 3 and subclause 4, only the subclause 3 rate is payable to the member.

   Example: A member performed duty in Greece and then flew to Libya on the same day. The member is not entitled to two payments in respect of that day. It is the payment in respect of the service in Libya that applies (subclause 3).

3. For any day on which the member served in Libya — AUD 150.
4. For any day on which the member served in the area described at subparagraph 1.b.ii — AUD 42.59.
5. A member may be entitled to an additional payment for leave accrued while they were eligible for payment under this Determination.

   a. The following leave types may attract a payment.

      i. Basic recreation leave.

         **Authority:** Basic recreation leave is provided for in Chapter 5 Part 2 Division 2 of *Defence Determination 2005/15, Conditions of service.*

      ii. War service leave.

         **Authority:** War service leave is provided for in Chapter 5 Part 6 of *Defence Determination 2005/15, Conditions of service.*

      iii. Additional recreation leave.

         **Authority:** Additional recreation leave is provided for in Chapter 5 Part 2 Division 3 of *Defence Determination 2005/15, Conditions of service.*

   b. Time limits apply to this provision.

      i. A member may not be paid for more basic recreation leave than accrued while the member met the requirements of subclause 1.

      ii. A member may not be paid for more war service leave or additional recreation leave than accrued in respect of periods when the member met the requirements of subclause 1.

   c. The amount is calculated at the following rates for the periods of leave taken.

      i. For periods accrued in relation to service in Libya — AUD 150 a day.

      ii. For periods accrued in relation to service in the area described in subparagraph 1.b.ii — AUD 42.59 a day.

**NOTE**

1. Defence Determination 2005/15, as amended to date. For previous amendments see Note to Defence Determination 2012/1 and amendments made by Defence Determinations 2012/1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.
Zone A – Warlike

Zone B – Non-warlike

Zone A – Libya and its torrential waters and superjacent airspace

Zone B – International waters and superjacent airspace of the central Southern Mediterranean Sea between Libya and its territorial waters and superjacent airspace between 10° 00’ E and 28° 00’ E and south of 41° 00’ N, including portions of Italy, Greece, Turkey, Albania and all of Malta, but excluding Libya and its territorial waters and superjacent airspace.
EXPLANATORY STATEMENT

Defence Determination 2012/15

The purpose of this Determination is to provide a transitional payment for members of the Australian Defence Force (ADF) who were deployed in a third-country deployment in support of United Nations Security Council Resolutions 1970 and 1973 – No Fly Zone and Maritime enforcement operations against Libya. It is made under section 58B of the Defence Act 1903 (the Act).

A third-country deployment is one where an ADF member on a long-term administrative or exchange posting overseas is deployed with host country forces to an operational area. Members on a third-country deployment continue to have their conditions of service determined under section 58B of the Act. As Australia did not deploy forces to Libya special arrangements have been made for those members who deployed with host country forces.

The Prime Minister has agreed to the recommendations of the Minister for Defence regarding service of those members on third-country deployment to Libya. The recommendations included both warlike and non-warlike nature of service declarations under section 5C of the Veterans’ Entitlements Act 1986, for the period 31 March to 31 October 2011. The Minister for Defence Science and Personnel has agreed a rate of allowance for these members.

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 19 March 2012.

Clause 3 provides a payment for members who were deployed to prescribed areas with host country forces in any part of the period 31 March 2011 to 31 October 2011. The payment is calculated at two rates for two prescribed operational areas. The clause also provides that the member may be paid an amount for periods of basic recreation leave, additional recreation leave and war service leave taken.

A map showing the operational areas is in the Attachment.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions are subject to merits review under the ADF redress of grievance system, including an appeal to the Defence Force Ombudsman.

This Determination engages the following human rights:

- Right to the enjoyment of just and favourable conditions of work (article 7 of the International Covenant of Economic, Social and Cultural Rights).

Legitimate objective: Defence members perform duty in overseas locations, including locations of military conflict. The Executive makes the actual decision about whether the nature of that service is warlike or non-warlike. This determination simply ensures than the nature of service that a member provides is reflected in the level and type of benefits for which they are eligible. Warlike or non-warlike service could cause significant adverse effect on the lifestyle or welfare of members, as a result of the conditions at the conflict location, as compared with those in Australia. These hardships may include danger, difficult climates and working conditions, and housing.

Reasonable, necessary and proportionate: Defence requires its members to work in locations of military conflict. Members are provided with specialist training, equipment and support for their deployment duties. Conditions of service are provided to provide additional benefits, to assist the member and their family to not suffer a disadvantage. These benefits include allowances, war service leave, additional recreation leave, and special housing and removal arrangements, and social support for the member’s dependants. In addition the Income Tax Assessment Act 1936 exempts members on warlike service from income tax.
This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Consultation**

The Department of Veteran’s Affairs and the Department of Prime Minister and Cabinet were consulted in relation to this issue. The Prime Minister agreed the nature of service of those members on Libyan operations as a result of a third-country deployment.

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