Defence Determination 2013/37, Purchased recreation leave

I, WARWICK JAMES AUSTIN, Acting Director General People Policy and Employment Conditions, make this Determination under section 58B of the Defence Act 1903.

Dated 18th July 2013

Acting Director General
People Policy and Employment Conditions
Defence People Group
1 Citation

1. This Determination is Defence Determination 2013/37, Purchased recreation leave.
2. This Determination may also be cited as Defence Determination 2013/37.

2 Commencement

This Determination commences on 26 July 2013.

3 Amendment

Defence Determination 2005/15, Conditions of Service, as amended, is amended as set out in this Determination.

4 Clause 5.2.2 (Contents)

*after the entry for Division 4, insert*

Division 4A Purchased recreation leave

5 Chapter 5 Part 2 Division 4 (Extra recreation leave)

*at the end of Chapter 5 Part 2 Division 4, insert*

the Division set out in Schedule 1

6 Subclause 5.2.32.2 (Payment instead of recreation leave)

*substitute*

2. On ceasing continuous full-time service, the member is entitled to the sum of the following amounts, reduced by any purchased leave payments that have yet not been made by the member.

   a. An amount equal to salary for their period of recreation leave credit.

   b. Two days’ salary for each period of five days’ credit.

   See: Subclause 5 for the definition of salary under this clause.

   Note: This provision recognises that members would ordinarily have weekends during periods of recreation leave. These weekends would be paid, due to the ADF 7-day week pay model.

2A. This subclause applies if the amount calculated under subclause 2 is a negative number. The outstanding amount may become a debt to the Commonwealth.

   Example: A member has $2000 in purchased leave payments that have not yet been paid from their pay. Their recreation leave credit and two day supplement adds up to $1500. The member gets no payment instead of recreation leave and has a $500 debt to the Commonwealth.
7  Annex 5.2.A (Remote locations within Australia – additional recreation leave)

at the end of Annex 5.2.A, insert

the Annex set out in Schedule 2

8  Subclause 5.8.15.1 (Effect on other forms of leave)

substitute

1. A member who is granted part-time leave without pay accrues recreation leave on a pro rata basis during that period.

   Exceptions: Additional recreation leave and purchased leave.

1A. A member on part-time leave without pay who is granted recreation leave takes leave only on the days that were planned as duty on their part-time leave without pay arrangement.

NOTE

1. Defence Determination 2005/15, as amended to date. For previous amendments see Note to Defence Determination 2013/1 and amendments made by Defence Determinations 2013/1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.
Division 4A: Purchased recreation leave

5.2.19A Purpose

Purchased recreation leave allows a member to increase the amount of recreation leave credit available to them. The member must pay the cost of the extra leave.

5.2.19B Application to purchase recreation leave

1. A member may apply to purchase recreation leave credit.

2. The application must be made using the form in Annex 5.2.B.

See: Annex 5.2.B, ADF request to purchase recreation leave

3. The application must include the following information.

   a. The member's undertaking to make a payment in return for an amount of leave credit, in accordance with clause 5.2.19E.

   See: Clause 5.2.19E, Payment

   b. An election of the number of pay periods over which the member chooses to pay the cost of the leave credit. The number of pay periods must be between 1 and 26, inclusive.

   c. The member's reason for the application.

4. The maximum period of recreation leave that may be purchased is the lesser of the following amounts.

   a. Twenty days.

   Note: This amount is not reduced for a member on part-time leave without pay.

   b. A period that increases the member's total recreation leave credit to 60 days. In this paragraph, **total recreation leave credit** includes the following leave types.

      i. Basic recreation leave.

      ii. Additional recreation leave.

      iii. Extra recreation leave.

      iv. War service leave.

   Example: A member has a 45 day recreation leave balance and no war service leave. The member may purchase 15 days of recreation leave. The member's recreation leave balance after purchase is 60 days.

5. A member may make further applications to purchase recreation leave when they have completed their undertakings in regard to earlier purchased leave.

5.2.19C Approval to purchase recreation leave

1. In this clause a **supervisor** means a person in the member’s chain of command, at the following rank or APS classification, or higher.

   a. Major.
b. APS 6.

2. A member and their supervisor must discuss a member's application for purchased recreation leave before it is decided. The supervisor must ensure the member understands they will be using their salary and Service allowance to pay for the leave credit.

3. The supervisor must consider whether operational requirements are likely to allow the member to be granted their full recreation leave credit.

   Note: After purchase, the member's full recreation leave credit will include both the following.

   a. The member's current recreation leave credit.

   b. The recreation leave the member has applied to purchase.

5.2.19D Credit of purchased recreation leave

1. This clause applies to a member whose application is approved under this Division.

2. The member's recreation leave credit is increased by the amount of recreation leave approved for purchase.

   Example: A member has a 40 day recreation leave credit. The member applies to purchase 10 days of leave. Their supervisor discusses the application with the member, and approves it. The member's credit is then increased to 50 days of recreation leave.

5.2.19E Payment

1. A member who has been approved to purchase leave must pay the cost of that leave.

2. The member's fortnightly payment is calculated using the table in subclause 3.

   Note: The payment reduces the member's gross income.

3. The following table shows how to calculate a member's fortnightly payment.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
</table>
| 1.   | Add the member's annual salary and Service allowance at the time the application to purchase leave was approved.  
      | Note: The payment amount is not increased as the member's salary increases. |
| 2.   | Convert the outcome of Step 1 to a daily pay rate by dividing it by 365. |
| 3.   | Multiply the outcome of Step 2 by the number of days of recreation leave that the member purchased. |
| 4.   | Divide the outcome of Step 3 by the number of pay periods over which the member elected to make payments. |
| 5.   | The outcome of Step 4 is the amount of the member's payment for each of the pay period in their application. |

4. The amount of the payment is not reduced if the member is on part-time leave without pay.

5. A payment that is not made in accordance with this election becomes a debt to the Commonwealth.
5.2.19F Administration of purchased recreation leave

A purchased recreation leave credit is treated in accordance with Division 6.

See: Division 6, Administration and payment for recreation leave
ADF - Request to Purchase Recreation Leave

Privacy Statement

The Department of Defence must abide by the principles contained in the *Privacy Act (1988)* and the following privacy statement is provided in accordance with the Information Privacy Principles.

I acknowledge that personal information collected on this form will be used for the purposes of personal contact, follow-up calls, and mailing. The information may be used by or disclosed to other persons within Defence and to other agencies. This could include my Commanding Officer and other Defence sections who require the information for official purposes, including audit, financial accountability and statistical purposes.

Furthermore, I acknowledge that Defence will not use or disclose my personal information for any other purposes without first obtaining my express or implied consent. Defence may however be required to disclose my personal information without my consent if the disclosure is:

- Required or authorised by law (including the *Privacy Act (1988)*).
- Required for the protection of the public revenue.
- Required in order to investigate an unlawful activity.
- Required by an enforcement body for investigative activities.
- Necessary to prevent a serious or imminent threat to a person's life, health or safety.

I may request further information relating to the use, disclosure, handling and storage of my personal information by contacting my Commanding Officer.

Note: You must acknowledge that you have read and understood the privacy statement before completing and submitting this form.

☐ I have read and understand the above Privacy Statement.

Please proceed to the next page.
General instructions
All Parts that are marked with an asterisk (*) are mandatory and must be completed before the form can be digitally signed. ADF members and their supervisors should note the following before submitting a request to purchase annual leave:
• Any request to purchase annual leave must be discussed with your supervisor.
• Purchased leave must not take a member's leave balance above 60 days.
• The maximum amount of leave that can be purchased is 20 days in any 12 month period.
• Leave purchased is added to the leave balance and is available for immediate use.
• Amounts to be deducted from salary for repayments will be based on the daily rate of base salary and service allowance (before tax) being received at the commencement of the deduction.
Note: Members on part time LWOP - repayment will be based upon full time salary and service allowance.
• Purchased leave cannot be sold back or 'cashed out'.
• Member is to ensure sufficient salary is available after allotments to recover repayment amounts.
• Any repayment not made during a member's period of service will be deemed a debt to the Commonwealth. Recovery will be made via final payments.
Important note: Purchased leave is subject to leave lapsing requirements.

Part A - Member details *
Correct completion of this section is necessary for prompt processing of leave.
Members should access PSS to confirm current recreation leave balance.
Maximum days available to purchase will calculate automatically.

<table>
<thead>
<tr>
<th>Employee ID</th>
<th>Service number</th>
<th>Family name</th>
<th>Given name(s)</th>
<th>Service</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email</td>
<td>Unit location</td>
<td>Phone number</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Annual Leave Entitlement details can be located in PSS > My Leave Entitlements

| Current Recreation Leave balance (Days) | As at payday (Date) | Maximum days available to purchase |

Part B - Details of leave purchase *
(Note: Any discrepancy of entered data will be returned to the member for correction)

Current Annual and Service Allowance can be located via most recent SVA.

<table>
<thead>
<tr>
<th>Department</th>
<th>Location</th>
<th>Pay Group</th>
<th>Pay Rate</th>
<th>Pay Start Date</th>
<th>Pay End Date</th>
<th>Advice</th>
<th>Payday</th>
</tr>
</thead>
</table>

Annual Salary: $77,395.00
Service Allowance: $0
Pay Group: 0
Pay Start Date: 1/30/2011
Pay End Date: 12/31/2011
Advice: 525

Estimated repayment amount will calculate automatically based on the annual salary and service allowance entry. If annual salary or service allowance has been entered incorrectly the form will be returned to the member for correction.
If you do not receive a Service allowance, please enter the number '0'.

<table>
<thead>
<tr>
<th>Current annual salary</th>
<th>Current Service allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total days to be purchased
Number of pay periods for repayments
Estimated repayment per pay

Defending Australia and its National Interests
www.defence.gov.au
Repayments to take effect from

Please note: If repayment effective date is left blank the purchase of recreation leave will commence from the next effective pay date.

Reason

C Caring responsibilities  C Maternity / paternity  C Recreational purposes  C Other

Part C - Member’s declaration *

Member must discuss the purchase of additional recreation leave with supervisor to ensure workload planning occurs.

I state that I will pay the cost of the additional leave as set out in Part B. If I do not pay in accordance with my undertaking, I understand the amount may be recovered as a debt under the Financial Management and Accountability Act 1997. In accordance with the requirement of PACMAN I certify that I have discussed the purchase of additional recreation leave with my supervisor to ensure workload planning occurs.

Signature

Part D - Supervisor recommendation (Recommendation not below MAJ / APS6) *

Supervisor recommendation is the first level of authorisation for purchase of additional recreation leave.

Is this purchase recommended?  C Yes  C No

State reason?

C Operational reasons  C Excess leave balance  C Other

Note: You must ensure you indicate whether the leave purchase is or is not recommended before signing form

Employee ID  Service  Rank  Appointment

Signature

Part E - Approving authority (Approval not below MAJ / APS6) *

The approving authority is responsible for ensuring that the member is notified as soon as practicable of his or her decision and that the original application is forwarded directly and without delay to MPAC.

The approving authority is to advise the member of the decision and forward the completed application to the Military Personnel Administration Centre (MPAC) without delay.

Please specify whether the leave purchase is or is not approved by completing the relevant section.

If leave purchase is not approved, this application should be entered into the Denied Leave Application Panel in PMKeyS by the member’s relevant administrative unit.

C Yes (Leave purchase is approved)  C No (Leave purchase is not approved)

State reason for non-approval

Employee ID  Service  Rank  Appointment
Part F - MPAC use only *

Clerical staff are to initial and date each field as applicable.

<table>
<thead>
<tr>
<th>Field</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>PMKeyS Leave adjusted</td>
<td></td>
</tr>
<tr>
<td>ADF pay transaction number</td>
<td></td>
</tr>
<tr>
<td>Employee ID</td>
<td></td>
</tr>
</tbody>
</table>
EXPLANATORY STATEMENT

Defence Determination 2013/37

This Determination amends Defence Determination 2005/15, Conditions of service (the Principal Determination), made under section 58B of the Defence Act 1903 (the Defence Act) and in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (AIA Act). Determinations made under section 58B of the Defence Act are disallowable non-legislative instruments and are subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act. Chapter 5 of the Principal Determination sets out provisions dealing with leave for members of the Australian Defence Force (ADF).

The purpose of this Determination is to introduce arrangements for members to purchase additional recreation leave. Purchased recreation leave allows a member to have additional personal time, and to spread the cost of that time over the year. Additional recreation leave allows members to attend to personal interests of their choosing, which might include caring for children, holidays, hobbies and preparation for retirement.

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 26 July 2013.

Clause 3 specifies that the amendment is made to the Principal Determination, as amended.

Clause 4 inserts a new entry into clause 5.2.2 of the Principal Determination. The clause acts as an index to Chapter 5 Part 2 of the Principal Determination. The new entry reflects the insertion of a new Division 4A by clause 5.

Clause 5 inserts a new Division 4A into Chapter 5 Part 2 of the Principal Determination. The new Division sets out the purchased recreation leave scheme.

- Clause 5.2.19A sets out the purpose of the Division.
- Clause 5.2.19B describes the application process for the leave. The amount that may be purchased is limited, to 20 days, or a lesser amount that would increase a member's balance to 60 days.
- Clause 5.2.19C sets out who can approve an application to purchase leave, and the approval process.
- Clause 5.2.19D describes how purchased leave is credited to a member's recreation leave balance. The leave is fully credited when the member's application is approved.
- Clause 5.2.19E sets out the calculation of the payment for the purchased recreation leave. Members are able to spread the payments over up to 26 pays, thus making the leave easier to budget for.
- Clause 5.2.19F provides that Chapter 5 Part 2 Division 6 governs other aspects of purchased leave. These include the grant of leave, and payment instead of leave when a member leaves the ADF.

Clause 6 substitutes subclause 5.2.32.2 of the Principal Determination with two new subclauses, subclause 5.2.32.2 and subclause 5.2.32.2a. Subclause 5.2.32.2 sets out the calculation of payment instead of recreation leave when leaving the ADF. The calculation has been modified to provide that the amount paid must be reduced by any outstanding purchased leave payments. Subclause 5.2.32.2A is new, and provides that any outstanding purchased leave payments that cannot be recovered from payment instead of recreation leave becomes a debt to the Commonwealth.

Clause 7 inserts a new Annex 5.2.B into the Principal Determination. The Annex sets out the prescribed form for members who wish to apply to purchase recreation leave.
Clause 8 substitutes subclause 5.8.15.1 of the Principal Determination with two new subclauses, subclause 5.8.15.1 and subclause 5.8.15.1A.

Subclause 5.8.15.1 of the Principal Determination sets out how recreation leave accrues for a member on part-time leave without pay. It provides for the same leave accrual outcomes as the former subclause, but is clearer in its operation. It also adds purchased leave to those leave types that do not accrue on a pro rata basis.

Subclause 5.8.15.1A of the Principal Determination sets out how recreation leave is granted for a member on part-time leave without pay. Leave is granted only for days that are the member's regular days of duty. The member does not lose recreation leave in respect of days that are the unpaid days of the part-time leave without pay arrangement.

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.

**Authority:** Section 58B of the *Defence Act 1903*
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Defence Determination 2013/37, Purchased recreation leave

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Determination

This Determination makes amendments to Defence Determination 2005/15, Conditions of Service.

The purpose of this Determination is to introduce arrangements for members to purchase additional recreation leave. Purchased recreation leave allows member to have additional personal time, and to spread the cost of that time over the year. Additional recreation leave allows members to attend to personal interests of their choosing, which might include caring for children, holidays, hobbies and preparation for retirement.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

The protection of a person's right to remuneration engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

Legitimate objective: Australian Defence Force (ADF) members have the same needs as any other members of the community to care for their children in school holidays, and to follow their own recreational interests. ADF conditions of service include quite generous leave arrangements. Nevertheless members may want more leave to be available.

Reasonable, necessary and proportionate: Purchased recreation leave gives members the opportunity to increase their leave balances by trading leave for reduced income. The formula for calculating the cost of that leave contains an element of subsidy in the member's favour.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Warwick James Austin, Acting Director General People Policy and Employment Conditions