Defence Determination 2013/58, Higher duties allowance – amendment

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

Dated 28 November 2013

Acting Director General
People Policy and Employment Conditions
Defence People Group
1 Citation
1. This Determination is Defence Determination 2013/58, Higher duties allowance – amendment.
2. This Determination may also be cited as Defence Determination 2013/58.

2 Commencement
This Determination commences on 13 February 2014.

3 Amendment
Defence Determination 2005/15, Conditions of Service, as amended,¹ is amended as set out in this Determination.

4 Subclause 3.2.7.1 (Calculating and pro rating salary and allowances)
substitute
1. The fortnightly rate of salary and higher duties allowance is worked out by the following steps.

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Find the annual rate of salary and allowance payable to the member.</td>
</tr>
<tr>
<td>2.</td>
<td>Multiply that figure by fourteen.</td>
</tr>
<tr>
<td>3.</td>
<td>Divide the result of Step 2 by 365.</td>
</tr>
<tr>
<td>4.</td>
<td>The result of Step 3 is the fortnightly rate of salary and allowance that applies to the member.</td>
</tr>
</tbody>
</table>

5 Subclause 3.2.7.2 (Calculating and pro rating salary and allowances)
substitute
2. The daily rate of salary, allowance set by the DFRT, or higher duties allowance payable to a member is either of the following rates.

   a. In the case of a member who is granted part-time leave without pay — one tenth of the fortnightly rate.

   b. In any other case — one fourteenth of the fortnightly rate.

6 Subclause 3.2.25.7 (Increment advancement), see
substitute

Related Information: Chapter 4 Part 1 Division 3 clause 4.1.20, Increments
Chapter 4 Part 1 (Higher duties allowance)

substitute

the Part set out in the Schedule

8 Transitional

1. This clause applies to a member who meets both the following conditions.
   a. The member was directed to perform higher duties before 13 February 2014.
   b. The member's higher duties direction had an end date on or after 13 February 2014.

2. The member is entitled to higher duties allowance under arrangements set out in Defence Determination 2005/15, Conditions of service, as in force on 12 February 2014.

3. The arrangements set out in this clause apply until the end of the member's current higher duties direction.

Note: Higher duties allowance for a direction made after 13 February 2014 are assessed under Defence Determination 2005/15, as amended.

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, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57.
Part 1: Higher duties allowance

4.1.1 Overview
1. Higher duties allowance may be paid to encourage and reward members when they perform duties in vacant higher positions.

2. This Part has four elements.
   a. To recognise when a member performs the duties of a position that attracts a higher responsibility than their own position.
   b. To set out who is eligible for higher duties.
   c. To set out who can direct a member to perform higher duties.
   d. To set out how higher duties allowance is worked out, and how it can be ended.

4.1.2 Principles
1. Higher duties may be used for members in either of the following situations.
   a. The member is posted to a position at a higher rank or skill level.
   b. The member is directed to perform the duties of a position at a higher rank or skill level.

2. Payment of higher duties allowance is not automatic on performance of duties at a higher level. A directing member decides whether or not to direct a member to perform duties at a higher level. To be eligible for the allowance, a member must meet additional conditions set out in this Part.

   Example: To be eligible to be paid higher duties allowance a member must have been directed to perform the higher duties. The member must also meet the minimum and maximum time periods set out in Division 2 and other requirements in this Part.

3. The following basic principles can be seen in the limits on higher duties allowance in this Part.
   a. Higher duties is not paid when there is no difference between the ranks of the positions. In certain circumstances a member may be paid for a higher pay grade or specialist skill at their rank.
   b. The member may perform higher duties in a position one or more ranks higher than their own. The member must perform the duties of the higher position for the allowance to be payable.
   c. The member must be assessed as capable of performing the duties of the higher position.
   d. A specialist officer cannot be paid higher duties allowance for a level of professional or trade competence that they do not hold.

4.1.3 Member this Part applies to
This Part applies to members on continuous full-time service and Reserve service. It sets out conditions for eligibility for the allowance. These conditions must be met for the period when they perform the duties of any of the following position types.
a. Permanent Force positions.
b. Reserve positions.
c. Star rank positions.
d. APS positions.
e. Some foreign military force positions.

4.1.4 Member this Part does not apply to

This Part does not apply to a member who is a trainee.

4.1.5 Definitions

This table defines terms used in this Part.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition in this Part</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuous full-time service</td>
<td>Means the same as in clause 1.3.15. See: Chapter 1 Part 3 Division 1 clause 1.3.15, Continuous full-time service</td>
</tr>
<tr>
<td>Directing member</td>
<td>Means the same as in clause 4.1.10. See: Division 2 clause 4.1.10, Directing member</td>
</tr>
</tbody>
</table>
| Employment category           | Means a category set out in any of Schedules B.2, B.9 and B.11 of Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries. :
|                               | In this Part, a specialist officer is only a member whose pay is set out in any of the following schedules of Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries. |
|                               | a. Schedule B.5, Specialist Officer – Chaplain                                                                                                          |
|                               | b. Schedule B.6, Specialist Officer – Dental Officer                                                                                                 |
|                               | c. Schedule B.7, Specialist Officer – Legal Officer                                                                                                 |
|                               | d. Schedule B.8, Specialist Officer – Medical Officer                                                                                                 |
|                               | e. Schedule B.15, Senior Officer Specialist – Medical Officer                                                                                           |
|                               | f. Schedule B.16, Senior Officer – Dental Officer                                                                                                       |
|                               | g. Schedule B.17, Senior Officer – Legal Officer                                                                                                        |
|                               | Note: Specialist officers – Aviation are not included in this list as they may not be directed to perform higher duties. See Division 2 clause 4.1.13, Member ineligible to be directed to perform higher duties. |
| Vacant position               | Is defined in clause 4.1.6. See: Clause 4.1.6, Meaning of vacant position                                                                                |

4.1.6 Meaning of vacant position

1. A position must meet both of the following conditions to be a vacant position.

   a. It is an established or deployed position in the ADF or it has APS duties.
b. It is temporarily vacant.

   **Example:** A member is on leave for a month. Their position is temporarily vacant, so a decision could be made to fill it on a higher duties basis.

   **Related Information:** A member can only be directed to perform higher duties in a vacant position. See paragraph 4.1.8.c, Member eligible to perform higher duties

2. A vacant position may also be known as a vacant established position.

### 4.1.7 Contents

This Part includes the following Divisions.

<table>
<thead>
<tr>
<th>Division 1</th>
<th>Division 2</th>
<th>Division 3</th>
<th>Division 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>Direction to perform higher duties</td>
<td>Payment of higher duties allowance</td>
<td>Termination of higher duties</td>
</tr>
</tbody>
</table>
Division 1: General

4.1.8 Member eligible to perform higher duties

A member is eligible to perform higher duties if all the following conditions are met.

a. They are entitled to salary.

b. They have been directed to perform the higher duties under clause 4.1.11.
   
   See: Division 2 clause 4.1.11, Direction

c. The duties to be performed are the duties of a vacant position. Vacant position is described in clause 4.1.6.

   See: Division 1 clause 4.1.6, Meaning of vacant position
Division 2: Direction to perform higher duties

4.1.9 Purpose

This Division describes the direction to perform higher duties. This direction must be given before higher duties allowance can be paid.

See: Division 1 clause 4.1.8, Member eligible to perform higher duties

Note: A direction to perform higher duties should only be made if it is intended that the member should be paid an allowance for performing the higher duties.

4.1.10 Directing member

In this Division, a **directing member** is a person described in the following table.

<table>
<thead>
<tr>
<th>Item</th>
<th>If the rank of the member being directed is...</th>
<th>and the directing member is an ADF member...</th>
<th>or an APS employee...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Colonel or below</td>
<td>who meets all the following conditions:</td>
<td>who meets both the following conditions:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. They hold the rank of Sergeant, or a higher rank.</td>
<td>a. They are an APS 4, or a higher classification.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. They are at least one rank higher than the vacant position.</td>
<td>b. They supervise or manage the vacant position.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. They are in the member's chain of command.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Brigadier or higher</td>
<td>who has command over the vacant position</td>
<td>who supervises or manages the vacant position.</td>
</tr>
</tbody>
</table>

4.1.11 Direction

A directing member may direct a member to perform higher duties if the conditions and other considerations in clause 4.1.12 are met.

See:
Clause 4.1.8, Member eligible to perform higher duties, for all conditions that must be met before a member may be paid higher duties allowance
Clause 4.1.10 for definition of **directing member**
Clause 4.1.12, Conditions and relevant considerations for a higher duties direction

4.1.12 Conditions and relevant considerations for a higher duties direction

1. This clause sets out the matters a directing member must consider before directing a member to perform higher duties.

2. A directing member must be satisfied that the following conditions have been met.
a. The higher duties are in a position of a higher rank than that of the member who could be directed to perform the higher duties. If the position is not in the ADF, it has higher responsibilities.

**Exceptions:**
The following clauses describe special arrangements that do not have to meet this condition.
Division 3 clause 4.1.28, Rate for higher duties – Air Force officer acting as a Commanding Officer
Division 3 clause 4.1.29, Rate for higher duties – member acting as an Air Force Warrant Officer Engineer
Division 3 clause 4.1.30, Rate for higher duties – Air Force Executive Warrant Officer acting in higher tier position

b. The member is capable of performing the duties of the position.

**Example:** A trade Corporal is directed to perform the duties of her trade Sergeant while he is on leave. The Corporal has not done the promotion courses for Sergeant. The directing officer assesses her as capable of the Sergeant position. She may be directed to perform the duties of the position.

**Non-example:** A technical trade Corporal is available when a kitchen manager Sergeant is on leave. The Corporal has no trade competence in catering. As she is not capable of doing catering she may not be directed to perform higher duties.

c. The direction to perform higher duties is within the relevant time limits prescribed in any of clauses 4.1.14, 4.1.15 and 4.1.16.

**See:**
Clause 4.1.14, Minimum qualifying period – member on continuous full-time service
Clause 4.1.15, Minimum qualifying period – member on Reserve service or part-time leave without pay
Clause 4.1.16, Maximum period

d. This paragraph applies if the member to be directed is on part-time leave without pay. The directing member must be satisfied of both of the following matters.

i. The duties of the position can be carried out effectively on a part-time basis.

ii. The member can perform the duties of the position capably while on part-time leave without pay.

e. No other member is paid higher duties for acting in the same position during the period.

**Exception:** Higher duties allowance may be paid to both members if all the following conditions are met.

i. A member has been posted to a position on higher duties.

ii. That member is granted leave or medical absence.

iii. That member qualifies for payment of higher duties allowance during the leave or medical absence under the rules in clause 4.1.33.

**See:** Division 3 clause 4.1.33, Member on leave

iv. Another member fills the position on higher duties while the first member is on leave.

f. If the position is to be filled by two members who are job sharing, the members perform duty in the position at different times.
3. A directing member must consider the following matters.

   a. Whether there is a reason to pay higher duties other than that there is a temporary vacancy.

       **Note:** Payment of higher duties allowance is not automatic. A position becoming temporarily vacant is not in itself enough reason to assign its duties temporarily to another member.

   b. Whether the work of the vacant position needs to be done for all or part of the period of the vacancy. The assessment must cover all the following factors.

       i. The duties of the vacant position.

       ii. Whether the duties need to be performed. The need might be for all or part of the period.

           **Example:** The duties can be deferred or re-allocated. There is no need for a member to perform higher duties in the vacant position.

       iii. The period that a member would be required to perform duties in the higher position.

       iv. The overall benefit to Defence of the job being filled.

   c. Whether the member is excluded from higher duties by the operation of clause 4.1.13.

       **See:** Clause 4.1.13, Member ineligible to be directed to perform higher duties

   d. The skills and experience of the member.

   e. Whether the member will be performing all or a substantial part of the duties the vacant position is likely to require.

       **Example:** The member being considered for higher duties has a good grounding in the skills, but some aspects of the job will be new to them. There is an occasional task the member would not be able to perform. The directing member considers the member would be able to perform a substantial part of the duties. Higher duties would develop that member's skills for the future.

   f. For a specialist officer vacancy, whether the member who could be directed is a member of that same specialisation.

4.1.13 **Member ineligible to be directed to perform higher duties**

The following classes of members may not be directed to perform higher duties.

   a. A specialist officer who does not hold the level of professional or trade competence required for the higher position.

   b. A trainee or member undergoing training.

   c. A member of the Aviation Specialist stream.

   d. A member on continuous full-time service may not be directed to perform higher duties in a Reserve position that is not full-time.

   e. A member described in the following table. There is no significant increase in responsibility between the duties described.
<table>
<thead>
<tr>
<th>Item</th>
<th>A...</th>
<th>may not be directed to perform higher duties...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Seaman</td>
<td>as an Able Seaman.</td>
</tr>
<tr>
<td>2.</td>
<td>Private</td>
<td>as a Private Proficient.</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>as a Lance Corporal in the Army, unless the higher ranked position is an established position. <strong>Example:</strong> The position is an established position in an infantry unit.</td>
</tr>
<tr>
<td>3.</td>
<td>Aircraftman or Aircraftwoman</td>
<td>as a Leading Aircraftman or Leading Aircraftwoman.</td>
</tr>
</tbody>
</table>

### 4.1.14 Minimum qualifying period – member on continuous full-time service

1. **This clause applies to a member on continuous full-time service.**

   **Exception:** Clause 4.1.15 provides other arrangements for a member on part-time leave without pay.

   **See:** Clause 4.1.15, Minimum qualifying period – member on Reserve service or part-time leave without pay

2. **A directing member may not direct a member to perform higher duties for less than 10 continuous working days for the purpose of eligibility for the allowance.**

   **Exception:** A directing member may direct a member to perform higher duties for a period of less than 10 days if all the following conditions are met.
   - a. The period is at least five continuous working days.
   - b. Capability or operational performance will suffer if the position is left vacant.
   - c. The duties of the position cannot be deferred or reallocated to other positions.

   **Example:**
   1. A higher duties vacancy exists for two weeks. The directing member wants to direct a member to fill it. The position is filled Mondays to Fridays, but not on weekends. Two Monday to Friday periods are 10 consecutive working days.
   2. A position needs to be filled on a Saturday. That day is a working day for that position, so is included in the 10-day calculation.

### 4.1.15 Minimum qualifying period – member on Reserve service or part-time leave without pay

1. **This clause applies to a member on Reserve service or a member on part-time leave without pay.**

   **Related Information:** Clause 4.1.14, Minimum qualifying period – member on continuous full-time service

2. The member is only eligible for the allowance under this Part if directed to perform higher duties for 10 continuous working days or more.

3. In this clause, **10 continuous working days** means 10 days that the member is due to work on higher duties. It is not broken by days when the member is not required to attend for duty.
**Example:** A member works on Mondays and Tuesdays and is directed to perform higher duties. The member would take five weeks of work to work for 10 continuous working days. If the vacancy is for at least five weeks the member may paid higher duties allowance.

**Non-example:** A member works on Mondays and Tuesdays and is directed to perform higher duties. On the second Monday the member is needed in their usual job, does not work on higher duties. That Monday breaks the period of continuous working days.

### 4.1.16 Maximum period

A directing member may not direct a member to perform higher duties for a period that is longer than six months.

**Exception:** A member who has been posted into the position may be directed for a longer period, up to the period of the posting.

### 4.1.17 Assessment for higher duties on posting

1. This clause applies to a member who is posted into a position of higher rank.
2. A trial period may be used to assess the member’s competence to perform the higher duties.
3. The trial period may not be longer than three months.
4. The member’s performance may be assessed at any time during the trial period.
5. If the member is assessed as capable of performing the higher duties, the member is entitled to higher duties allowance from the first day of the trial period.
6. The decision to use a trial period and the performance assessment may be made by a Commanding Officer or a directing member.

**Related Information:** Division 4 Clause 4.1.34, Early termination of higher duties
Division 3: Payment of higher duties allowance

4.1.18 Purpose

This Division describes the calculation of higher duties allowance.

Note: A member on higher duties is still paid their substantive salary. Higher duties allowance is paid in accordance with this Division. This may give the member a higher total rate of remuneration for performing work of a higher value.

4.1.19 Basis of higher duties allowance

Higher duties allowance is paid for acting in a higher rank.

Exceptions: Higher duties may be paid at the same rank, or for skill, in some limited situations. These are listed below.

<table>
<thead>
<tr>
<th>Item</th>
<th>Clause</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Rate for higher duties – specialist officer</td>
<td>Clause 4.1.26</td>
</tr>
<tr>
<td>2.</td>
<td>Rate for higher duties – Air Force officer acting as a Commanding Officer</td>
<td>Clause 4.1.28</td>
</tr>
<tr>
<td>3.</td>
<td>Rate for higher duties – member acting as an Air Force Warrant Officer Engineer</td>
<td>Clause 4.1.29</td>
</tr>
<tr>
<td>4.</td>
<td>Rate for higher duties – Air Force Executive Warrant Officer acting in higher tier position</td>
<td>Clause 4.1.30</td>
</tr>
</tbody>
</table>

4.1.20 Payment of higher duties allowance

A member who has met the requirements of clause 4.1.8 may be paid higher duties allowance at an annual rate calculated under this Division.

See: Division 1 clause 4.1.8, Member eligible to perform higher duties

Related Information: The conversion of higher duties allowance to daily and fortnightly rates is set out in the following clauses.
Chapter 3 Part 2 Division 1 clause 3.2.7, Calculating and pro rating salary and allowances

4.1.21 Increments

A member does not get increments of higher duties allowance.

Note: The member may be eligible for increments on their substantive salary schedule of rates.

See: Chapter 3 Part 2 Division 3 subclause 3.2.25.7, Increment advancement. This subclause provides for increments in the member's substantive rank while on higher duties.

4.1.22 Period of payment

Higher duties allowance can only be paid for the period the member performs duty in the vacant position.

Exception: Higher duties allowance may be paid during leave if allowed by clause 4.1.33, Member on leave.
**Example:** A member is directed to perform higher duties from 1 February to 16 April. On 17 April there is no direction to perform higher duties. The member's higher duties allowance stops.

### 4.1.23 Rate for higher duties – member acting within the same Schedule or as a Warrant Officer Class 1

1. This clause applies to a member in either of the following classes.
   a. A member who performs higher duties in a position which attracts a salary within the same schedule of rates as the member's substantive position. In this paragraph, *schedule of rates* means a schedule in *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.
   b. An other rank member who performs higher duties as a Warrant Officer Class 1.

2. The allowance payable is the difference between the following rates for the period of the higher duties.
   a. The member's substantive salary rate.
   b. The salary rate that is one rank higher than the member's at the member's substantive pay grade.

3. The formula in subclause 2 also applies if the member is directed to act in a position two or more ranks higher than their substantive rank.

### 4.1.24 Rate for higher duties – other rank member acting as a commissioned officer

1. This clause applies if both the following conditions are met.
   a. The member is in one of the following situations.
      i. The member is a Warrant Officer Class 1 with a substantive rate of salary in Schedule B.10 of *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.
         *See:* Schedule B.10, Warrant Officer Class 1 salary rates
      ii. The member is an other rank member paid a substantive rate of salary under Schedule B.12 of *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.
         *See:* Schedule B.12, Other Rank salary rates
      iii. The member's former Corporal salary is being preserved by clause B.2.5 of *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.
   b. The member is directed to act as a commissioned officer.

2. Higher duties allowance is calculated at 5% of the member's substantive rate of salary for the period of higher duties.

3. The calculation method given in subclause 2 also applies if the member is directed to act in a position two or more ranks higher.

### 4.1.25 Rate for higher duties – Major or below acting as a Lieutenant Colonel or Colonel

1. This clause applies if both the following conditions are met.
a. The member is ranked Major, or a lower rank.

b. The member acts as a Lieutenant Colonel or Colonel.

2. Higher duties allowance is calculated as the difference between the following amounts for the period of the higher duties.

a. The sum of the following amounts as relevant to the member.

   i. The member's substantive salary.

   ii. Service allowance.

   iii. Reserve allowance, as provided under *Defence Force Remuneration Tribunal Determination No. 22 of 2008*.

b. The amount of salary that the member would be entitled to if promoted one rank higher than their substantive rank, staying within the member's normal pay grade.

   **Example:** A Permanent Forces Lieutenant Colonel is directed to act as a Permanent Forces Colonel. His Lieutenant Colonel salary is at pay grade 6, on the highest increment. The member's higher duties allowance is based on the first increment of the Colonel salary, pay grade 6. No Service allowance or Reserve allowance are payable, so they are excluded from the calculation of higher duties allowance.

### 4.1.26 Rate for higher duties – specialist officer

1. This clause applies to a member acting in a specialist office position ranked Colonel or below.

2. The following table sets out how to calculate a rate of higher duties allowance.
<table>
<thead>
<tr>
<th>Item</th>
<th>Member</th>
<th>Calculation method</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The member performs higher duties at a higher rank within their specialisation. <strong>Exception</strong>: A member who is a medical officer. See: item 2.</td>
<td>Higher duties allowance is calculated as the difference between the following rates. &lt;br&gt; a. The member’s substantive salary rate. &lt;br&gt; b. The lowest salary rate for the member’s competency level at the higher rank.</td>
</tr>
<tr>
<td>2.</td>
<td>The member is a medical officer and performs higher duties at a higher rank within their specialisation.</td>
<td>Higher duties allowance is calculated as the difference between the following rates. &lt;br&gt; a. The member’s substantive salary rate. &lt;br&gt; b. The salary rate for the member’s medical level and increment at the higher rank.</td>
</tr>
<tr>
<td>3.</td>
<td>All the following conditions are met. &lt;br&gt; a. The member performs higher duties within their specialisation at a higher rank. &lt;br&gt; b. The higher position is at a higher rank and higher competency level. &lt;br&gt; c. The member holds the qualifications required for the higher position.</td>
<td>Higher duties allowance is calculated as the difference between the following rates. &lt;br&gt; a. The member’s substantive salary rate. &lt;br&gt; b. The lowest salary rate for the higher competency level at the higher rank.</td>
</tr>
<tr>
<td>4.</td>
<td>Both the following conditions are met. &lt;br&gt; a. The member performs higher duties at a higher rank within their specialisation. &lt;br&gt; b. There is no rate for the member’s competency level at the higher rank.</td>
<td>Higher duties allowance is calculated at 5% of the member’s substantive salary rate for the period of the higher duties.</td>
</tr>
<tr>
<td>5.</td>
<td>Both the following conditions are met. &lt;br&gt; a. The member performs higher duties at a higher rank outside their specialisation. &lt;br&gt; b. The member’s total remuneration is already higher than that of the higher position.</td>
<td></td>
</tr>
</tbody>
</table>

**4.1.27 Rate for higher duties – member on transitional rates**

1. This clause applies to a member who meets both the following conditions. <br> a. The member is paid a salary rate prescribed under Schedule B.4 of Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries. See: Schedule B.4, Other rank member appointed as officer – transitional salary rates <br> b. The member is directed to perform higher duties. 

2. The following table sets out the rate of higher duties allowance. In this table higher duties salary means a rate of salary defined in subclause 3. 

**Note**: It will not be the same as the Schedule B.4 salary that the member is earning.
### Higher duties allowance

<table>
<thead>
<tr>
<th>Item</th>
<th>Situation</th>
<th>Higher duties allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The member’s substantive salary rate is higher than the <strong>higher duties salary rate</strong>.</td>
<td>The member is not entitled to higher duties allowance.</td>
</tr>
<tr>
<td>2.</td>
<td>The member’s substantive salary rate is lower than the <strong>higher duties salary rate</strong>.</td>
<td>Higher duties allowance may be paid.</td>
</tr>
</tbody>
</table>

The allowance is calculated at the difference between the following amounts:

- a. The member’s substantive salary rate.
- b. The **higher duties salary rate**.

3. In the table in subclause 2, a **higher duties salary rate** means a rate of salary that meets all the following conditions.

- a. It is set out in Schedule B.3 of *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.

  **Note:** Schedule B.4 rates are transitional salary protection rates. They cannot be used to calculate higher duties allowance. For a member being paid Schedule B.4 salary rates the **higher duties salary rate** used in the table will be different to the salary they are usually paid.

- b. It is for a higher rank than the member's rank.

- c. It is at the same pay grade the member would occupy, if the member was paid under Schedule B.3 of *Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries*.

**Example:**

A Captain is paid a salary from Schedule B.4. It is the highest rate at pay column 5.

The Captain is directed to act in a Major position. If the Captain were not on transitional rates, the Captain would be in Schedule B.3, pay grade 4. The Captain's higher duties salary is the rate for a Major at pay grade 4 that is listed in Schedule B.3.

**See:**

- Schedule B.3, Officer salary rates
- Schedule B.4, Other rank member appointed as officer – transitional salary rates

### 4.1.28 Rate for higher duties – Air Force officer acting as a Commanding Officer

1. This clause applies to an Air Force officer who has been directed to perform higher duties in a Commanding Officer position.

**Exception:** A member who is already being paid one pay grade higher than the value of their position for having been previously posted to a Commanding Officer position is not paid higher duties allowance under this clause. See paragraph B.2.2.5(b) of *Defence Force Remuneration Tribunal Determination No. 15 of 2008*.

2. The following table sets out the calculation of higher duties allowance for the member.
<table>
<thead>
<tr>
<th>Item</th>
<th>Situation</th>
<th>Higher duties allowance</th>
</tr>
</thead>
</table>
| 1.   | The Commanding Officer position is at the same rank as the member. | Higher duties allowance is calculated at the difference between the following rates.  
   a. The member's substantive rate of salary.  
   b. A rate of salary at the member's rank one pay grade higher than the member's pay grade. |
| 2.   | The Commanding Officer position is at a higher rank than the member. | Higher duties allowance is calculated at the difference between the following rates.  
   a. The member's salary.  
   b. The rate of salary one rank and one pay grade higher than the member's salary. |

**Note:** Unlike salary arrangements that apply when a member is posted to a Commanding Officer position, this allowance stops when a member stops higher duties as a Commanding Officer.

### 4.1.29 Rate for higher duties – member acting as an Air Force Warrant Officer Engineer

1. This clause applies to a member who is directed to act as a Warrant Officer Engineer in the Air Force.

**Related Information:** Clause 4.1.30, Rate for higher duties – Air Force Executive Warrant Officer acting in higher tier position

2. Higher duties allowance is calculated as the difference between the following rates for the period of the higher duties.  
   a. The member's substantive rate of salary.  
   b. The rate of salary for the Warrant Officer Engineer position at the same tier at pay grade 8.

**Note:** The member is not entitled to keep the higher duties allowance when they stop higher duties. The allowance ends when the higher duties ends.

### 4.1.30 Rate for higher duties – Air Force Executive Warrant Officer acting in higher tier position

1. This clause applies to a member who meets both of the following conditions.  
   a. They are an Executive Warrant Officer in the Air Force.

**Note:** Executive Warrant Officer is an Air Force employment category. It is provided for under Part 3 of Schedule B.9, Warrant Officer Class 1 pay grades of Defence Force Remuneration Tribunal Determination No. 15 of 2008, Salaries.

   b. They are directed to perform the duties of a higher tier Executive Warrant Officer position.

**Related Information:** Clause 4.1.29, Rate for higher duties – member acting as an Air Force Warrant Officer Engineer
2. Higher duties allowance is calculated as the difference between the following rates for the period of the higher duties.
   a. The member's substantive rate of salary.
   b. The rate of salary prescribed for the higher tier Executive Warrant Officer position.

   **Note:** The member is not entitled to keep the higher tier salary when they stop higher duties. The allowance ends when the higher duties ends.

4.1.31 **Rate for higher duties – member acting at or above the rate of Brigadier**
1. This clause applies to a member who acts at or above the rate of Brigadier (often called a 'star rank').

   **Exception:** This clause does not apply to a member who acts in a statutory appointment.
   a. If the law that provides for the statutory office sets out arrangements that apply for acting appointments, those must be followed.
   b. If the law that provides for the statutory office permits acting appointments under section 33A of the *Acts Interpretation Act 1901*, then the member is to be provided with the amounts and benefits set out in the instrument of acting appointment.

   **Note:** Subclause 1 applies to members or positions of any employment category.

2. Higher duties allowance is calculated as the difference between the following rates.
   a. The member's substantive rate of salary.
   b. The relevant rate of salary prescribed in the following table.

<table>
<thead>
<tr>
<th>Item</th>
<th>Member</th>
<th>Salary used</th>
</tr>
</thead>
</table>
| 1.   | Colonel, acting as a Brigadier | The rate of salary the member would be paid if promoted to a Brigadier within their employment category.  
 **See:** Chapter 3 Part 2 Division 2 clause 3.2.18, Salary on promotion – general |
| 2.   | Brigadier, acting as a Major General | The rate the member would be paid if promoted to a Major General within their employment category.  
 **See:** Chapter 3 Part 2 Division 2 clause 3.2.18, Salary on promotion – general |
| 3.   | Major General acting as a Lieutenant General | The following salary, as set out in *DFRT Determination No. 15 of 2008, Salaries:*  
 **Exception:** If the Lieutenant General position is a statutory office this item does not apply. These members may be covered by ADF instruments of acting appointment (sometimes called 'standing acting arrangements').  
 The base salary component of pay point one of Part 3 of Schedule B.1, Senior officer salary rates. |

4.1.32 **Rate for higher duties – member acting outside the ADF**
1. This clause applies to a member in either of the following situations.
a. They are directed to perform the duties of an APS position and those duties are assessed as higher duties.

b. They are directed to perform higher duties at a higher rank in a position in a foreign military force.

**Examples:**
1. An exchange position with a foreign military force.
2. A member deployed overseas in an operational manning directive position with a multinational force.

2. The following table sets out the calculation of higher duties allowance.

<table>
<thead>
<tr>
<th>Item</th>
<th>If the member is acting in...</th>
<th>the higher duties allowance...</th>
<th>and...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>a Senior Executive Service Band 1 level position within the Department of Defence</td>
<td>is the difference between the member’s substantive rate of salary</td>
<td>the rate of salary the member would be paid if promoted to Brigadier within their employment category. See: Chapter 3 Part 2 Division 2 clause 3.2.18, Salary on promotion – general</td>
</tr>
<tr>
<td>2.</td>
<td>a Senior Executive Service Band 2 level position within the Department of Defence</td>
<td>is the difference between the member’s substantive rate of salary</td>
<td>the rate of salary the member would be paid if promoted to Major General within their employment category.</td>
</tr>
<tr>
<td>3.</td>
<td>a Senior Executive Service Band 3 level position within the Department of Defence</td>
<td>is the difference between the member’s substantive rate of salary</td>
<td>the following salary, as set out in DEFRT Determination No. 15 of 2008, Salaries: The base salary component of pay point one of Part 3 of Schedule B.1, Senior officer salary rates. See: Schedule B.1, Senior officer salary rates</td>
</tr>
<tr>
<td>4.</td>
<td>any other APS position with APS duties</td>
<td>is calculated at 5% of the member’s rate of salary for the period of higher duties.</td>
<td>-</td>
</tr>
<tr>
<td>5.</td>
<td>a higher rank in a position in a foreign military force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**4.1.33 Member on leave**

1. The following table shows how higher duties allowance is paid in conjunction with leave.
1. is unpaid – higher duties allowance is not paid during the leave.

2. meets all the following conditions.
   a. It is paid.
   b. It falls within the period of the higher duties.
   c. The member has been directed to continue higher duties on return from leave.

   the member has been posted to the position
   higher duties allowance is paid for the first two months of leave.

   Higher duties allowance is not paid for leave after the first two months.

   the member has not been posted to the position
   higher duties allowance is paid for the first month of leave.

   Higher duties allowance is not paid for leave after the first month.

2. The following table shows how higher duties allowance is paid for leave that falls immediately before a member goes on a new posting.

<table>
<thead>
<tr>
<th>Item</th>
<th>If the leave...</th>
<th>and...</th>
<th>then...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>is unpaid</td>
<td>–</td>
<td>higher duties allowance is not paid during the leave.</td>
</tr>
<tr>
<td>2.</td>
<td>is paid</td>
<td>the member has been posted to the higher position</td>
<td>higher duties allowance is paid for the first two continuous months of leave.</td>
</tr>
<tr>
<td>3.</td>
<td>is paid</td>
<td>the member has not been posted to the higher position</td>
<td>higher duties allowance is paid for the first continuous month of leave.</td>
</tr>
</tbody>
</table>

3. The rules in subclauses 1 or 2 must be met for each leave absence, for higher duties to be paid.

**Non-example:** A member took leave last month and was eligible to be paid higher duties allowance. The member applies for leave again, and this time the rules say he is not eligible to be paid higher duties allowance during the leave. The member is not paid higher duties allowance for the second absence.

**Related Information:**
1. Different arrangements apply for long service leave. See Chapter 5 Part 3 Division 4 clause 5.3.22, Salary – member on higher duties, temporary or acting rank. For payment instead of long service leave see Chapter 5 Part 3 Division 5 clause 5.3.27, Member on higher duties, temporary or acting rank.
2. Chapter 5 Part 2 Division 6 clause 5.2.32, Payment instead of recreation leave.
Division 4: Termination of higher duties

4.1.34 Early termination of higher duties

1. In this clause, a **directing member** has the same meaning as in clause 4.1.10.
   
   **See:** Division 2 clause 4.1.10, Directing member

2. A directing member may direct that a member cease to perform higher duties. The member must be informed of the direction.

3. A change in the direction to perform higher duties is effective from the later of the following days.
   
   a. The day that the member is notified of the change.
   
   b. A later day specified by the directing member.

4.1.35 Termination of higher duties allowance

A member's entitlement to higher duties allowance ends on the earlier of the following days.

a. The day the direction to perform the higher duties ends.

**Examples:**

1. A member is directed to perform higher duties from 1 March to 15 April. The member's direction ends on 15 April.

2. A vacancy exists from 1 March to 1 November. The directing member can direct a member to perform higher duties for six months. The member's direction ends on 31 August.

3. A member is directed to perform higher duties from 1 March to 15 April. On 1 April the directing member ends the direction, and notifies the member. The member's direction ends on 1 April.

**See:**

Division 2, Direction to perform higher duties
Division 2 clause 4.1.16, Maximum period

b. The day that is the effective date of a new posting or deployment order that moves the member out of the position.
EXPLANATORY STATEMENT

Defence Determination 2013/58

This Determination amends Defence Determination 2005/15, Conditions of service (the Principal Determination), made under section 58B of the Defence Act 1903 (the Act). Chapter 4 of the Principal Determination sets out provisions dealing with allowances for members of the Australian Defence Force (ADF).

The purpose of this Determination is to provide for revised higher duties allowance arrangements. It is opportune to review higher duties allowance, given the significant reforms that have been made by the Defence Force Remuneration Tribunal to ADF salary arrangements. As a result, a number of changes to higher duties allowance have been made. These include:

- discretion with regard to setting rates of higher duties allowance has been removed, instead set rates apply to all situations;
- changing the minimum qualifying period from five to ten days;
- changing the maximum period from three months to six months;
- removal of the distinction embodied by the terms 'full' and 'partial' higher duties. Instead clear descriptions of the amounts of higher duties allowance to be paid to members in various situations have been set out in the Determination; and
- removal of provisions that relate to redundant salary arrangements.

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 13 February 2014 to allow for administrative changes to be communicated across the ADF.

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

Clauses 4 and 5 add higher duties allowance to those benefits covered by the formulae in clause 3.2.7 of the Principal Determination. Clause 4 amends subclause 3.2.7.1 to prescribe a method of converting annual higher duties allowance to a fortnightly rate, and clause 5 amends subclause 3.2.7.2 to prescribe a method of converting annual higher duties allowance to a daily rate.

Clause 6 substitutes the cross reference to subclause 3.2.25.7 of the Principal Determination, which deals with salary increments. The cross reference has changed as a result of structural changes made by clause 7 of this Determination.

Clause 7 substitutes Chapter 4 Part 1 of the Principal Determination, which sets out the arrangements for higher duties allowance.

- Clause 4.1.1 of the Principal Determination sets out an overview of higher duties allowance.
- Clause 4.1.2 of the Principal Determination sets out the principles behind Chapter 4 Part 1 of the Principal Determination.
- Clause 4.1.3 of the Principal Determination describes the members to whom Chapter 4 Part 1 of the Principal Determination applies. Both members on continuous full-time service and members on Reserve service may be eligible for higher duties allowance.
- Clause 4.1.4 of the Principal Determination provides that Chapter 4 Part 1 of the Principal Determination does not apply to trainees.
- Clause 4.1.5 of the Principal Determination sets out definitions used in Chapter 4 Part 1 of the Principal Determination.
• Clause 4.1.6 of the Principal Determination sets out the conditions that can be used to work out if there is a vacant position.

• Clause 4.1.7 of the Principal Determination sets out the four Divisions that are contained in Chapter 4 Part 1 of the Principal Determination.

• Clause 4.1.8 makes up Chapter 4 Part 1 Division 1 of the Principal Determination. This Division sets out general higher duties information. It describes the members eligible to perform higher duties.

• Clauses 4.1.9 to 4.1.17 make up Chapter 4 Part 1 Division 2 of the Principal Determination. This Division describes direction to perform higher duties.

• Clause 4.1.9 of the Principal Determination sets out the purpose of Chapter 4 Part 1 Division 2.

• Clause 4.1.10 of the Principal Determination defines who may be a directing member, the person who may direct another member to perform higher duties.

• Clause 4.1.11 of the Principal Determination sets out the power to direct a member to perform higher duties.

• Clause 4.1.12 of the Principal Determination lays out facts and criteria that a directing member must consider when directing a member to perform higher duties. This covers issues such as rank, competence and whether the duties reasonably need to be performed.

• Clause 4.1.13 of the Principal Determination sets out specific sets of circumstances in which a member may not be directed to perform higher duties.

• Clause 4.1.14 of the Principal Determination sets out the minimum period of direction to perform higher duties for a member on continuous full-time service. In most circumstances that is ten consecutive days, though a shorter period may be approved in some circumstances. This represents a change in policy. Previously the qualifying period was five days.

• Clause 4.1.15 of the Principal Determination sets out the minimum period of direction to perform higher duties for a member on Reserve service or part-time leave without pay. The member is not eligible to be paid for performing higher duties, when directed for less than 10 days when the member was due to work. This represents a change in policy. Previously the qualifying period was a continuous aggregate period of five days.

• Clause 4.1.16 of the Principal Determination sets out the maximum period of direction to perform higher duties. It is six months. This represents a change in policy. Formerly higher duties automatically terminated three months after the start of the period of direction.

• Clause 4.1.17 of the Principal Determination provides for a trial period to assess a member’s competence to perform higher duties.

• Clauses 4.1.18 to 4.1.33 make up Chapter 4 Part 1 Division 3 of the Principal Determination. This Division describes eligibility and payment of higher duties allowance.

• Clause 4.1.18 of the Principal Determination sets out the purpose of Chapter 4 Part 1 Division 3.

• Clause 4.1.19 of the Principal Determination outlines the basis for higher duties allowance. It explains that the payment is for acting at a higher rank, but it can be paid for skill alone in prescribed circumstances.

• Clause 4.1.20 of the Principal Determination grants higher duties allowance to a member who meets certain conditions, summarised by the eligibility rules set out in clause 4.1.8 of the Principal Determination.
Clause 4.1.21 of the Principal Determination prevents a member who is paid higher duties allowance from being paid increments on the allowance.

Clause 4.1.22 of the Principal Determination prescribes the period that higher duties allowance may be paid to a member. This is the period the member occupies the vacant position.

Clauses 4.1.23 to 4.1.33 of the Principal Determination set out the rates of higher duties allowance for members in various situations. The number of sets of rules is necessary because of the wide variety of ADF pay arrangements, and the variety of positions in which a member may be directed to act.

Clause 4.1.23 of the Principal Determination describes the rate of higher duties allowance for a member who performs higher duties in a position that is set out in the same pay schedule as the member. It also covers other rank members who act as a Warrant Officer Class 1. Schedule means a schedule in DFRT Determination No. 15 of 2008, Salaries, the determination that sets out salaries for the ADF. For a member acting in a position two or more ranks higher, the rate has been set at the rate for one rank higher only. The discretion that formerly existed to set it at a higher rate has been removed.

Clause 4.1.24 of the Principal Determination describes the rate of higher duties allowance for a Warrant Officer Class 1 or other rank member who is directed to act as a commissioned officer. It also applies to members of equivalent rank in the Navy and Air Force. A higher duties allowance rate of 5% of the member’s salary is prescribed.

Clause 4.1.25 of the Principal Determination describes the rate of higher duties allowance for a member ranked Major, or a lower rank, who is directed to act as a Lieutenant Colonel or Colonel. It also applies to members of equivalent ranks in the Navy and Air Force.

Clause 4.1.26 of the Principal Determination describes the rates of higher duties allowance for a specialist officer in a variety of situations.

Clause 4.1.27 of the Principal Determination sets out rates of higher duties for a member on transitional rates. Transitional rates are those set out in Schedule B.4 of DFRT Determination No 15 of 2008, Salaries. The policy is that higher duties at a higher rank is not paid at the transitional salary rates, but at the standard rates for the higher duties rank.

Clause 4.1.28 of the Principal Determination describes the rate of higher duties allowance for an Air Force officer who has been directed to act as a Commanding Officer.

Clause 4.1.29 of the Principal Determination describes the rate of higher duties allowance for a Warrant Officer from a technical employment category who acts as a Warrant Officer Engineer in the Air Force.

Clause 4.1.30 of the Principal Determination describes the rate of higher duties allowance for an Executive Warrant Officer in the Air Force who is directed to act in a higher tier Executive Warrant Officer position.

Clause 4.1.31 of the Principal Determination sets out the rate of higher duties allowance for a member acting in a position with a rank of Brigadier or higher, and equivalents in the Navy and Air Force. Formerly this condition was only paid to members acting as a Brigadier.

Clause 4.1.32 of the Principal Determination sets out the rate of higher duties allowance for a member acting in a position that is not in the ADF. This could happen if the member fills a position in the Australian Public Service or a foreign military force. Formerly there was discretion for the CDF to set the rate of pay that should apply.

Clause 4.1.33 of the Principal Determination describes when higher duties allowance may be paid during a period of leave.

Clauses 4.1.34 and 4.1.35 of the Principal Determination make up Chapter 4 Part 1 Division 4 of the Principal Determination. This Division sets out arrangements for terminating higher duties.
Clause 4.1.34 of the Principal Determination gives a directing member the power to end a member's direction to perform higher duties. Directing member is defined in clause 4.1.10 of the Principal Determination, also inserted by clause 7 of this Determination.

Clause 4.1.35 of the Principal Determination sets out when a member's entitlement to higher duties allowance ends.

Clause 8 is a transitional provision. It provides that members who have a direction to perform higher duties in force on the date of effect of this Determination should continue to be paid as if this Determination had not been made, for the remainder of the period of that direction.

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 2013/58, Higher duties allowance – amendment.

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 this Defence Determination

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

The purpose of this Determination is to provide for revised higher duties allowance arrangements for members of the Australian Defence Force (ADF). A number of changes to higher duties allowance have been made. These include:

- discretion with regard to setting rates of higher duties allowance has been removed, instead set rates apply to all situations;
- changing the minimum qualifying period from five to ten days;
- changing the maximum period from three months to six months;
- removal of the distinction embodied by the terms 'full' and 'partial' higher duties. Instead clear descriptions of the amounts of higher duties allowance to be paid to members in various situations have been set out in the Determination; and
- removal of provisions that relate to redundant salary arrangements.

Human rights implications

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

Higher duties allowance is paid to members in a range of situations. Usually this involves performance of duties at a higher rank.

**Legitimate objective:** In an organisation as large and busy as the ADF it is inevitable that there is a need to fill short and medium term job vacancies. Filling these vacancies gives the organisation flexibility, and has the additional advantage of developing members’ skills and experience.

**Reasonable, necessary and proportionate:** Higher duties allowance ensures that members are properly remunerated for the additional skills they are required to display, when performing jobs of higher work value.

**Conclusion**

This Determination is compatible with human rights because it advances human rights.

Christon Scott Chamley, Acting Director General People Policy and Employment Conditions