



Defence Determination 2017/23, Leave – amendment

I, LISA ANNETTE ARNOLD, Acting Assistant Secretary People Policy and Employment Conditions, make this Determination under section 58B of the *Defence Act 1903*.

Dated 21 July 2017

L A ARNOLD
Acting Assistant Secretary
People Policy and Employment Conditions
Defence People Group

1 Citation

1. This Determination is Defence Determination 2017/23, Leave – amendment.
2. This Determination may also be cited as Defence Determination 2017/23.

2 Commencement

1. Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 of this instrument and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1 to this instrument	A day to be fixed by Assistant Secretary People Policy and Employment Conditions (the Minister's delegate) by notifiable instrument. However, if the provisions do not commence within the period of 12 months beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

2. Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 58B of the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments and transitional provisions

Part 1—Amendments

Defence Determination 2016/19, Conditions of service

1 Subsection 5.4.17.1 (Service in a remote location), note b

After the note, insert:

- c. A member with dependants (unaccompanied) does not accrue additional recreation leave for dependants living in a remote location.

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

Omit the Division, substitute:

Division 5: Purchased recreation leave

5.4.21 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 purchased recreation leave.

5.4.22 Application to purchase recreation leave

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

Exception: A member cannot apply to purchase leave credits in a period when they are on any of the following kinds of service.

- a. Warlike service.
- b. Non-warlike service.
- c. Foreign service, as defined by section 23AG (7) of the *Income Tax Assessment Act 1936*, which could reasonably be expected to be exempt from tax under sub-section 23AG of the *Income Tax Assessment Act 1936*.

Note: To qualify for the tax exemption, a member must be engaged in foreign service for a continuous period of not less than 91 days.

2. Recreation leave credits are purchased in hourly increments. Eight hours of purchased recreation leave credits is the equivalent of one full day of leave.

See: Subsection 5.4.24.3, Payment, for how the payment of purchased recreation leave is calculated.

3. A member must apply to purchase recreation leave credits using form AE428, *ADF – Request to Purchase Recreation Leave*.

4. The maximum amount of recreation leave credits a member may purchase in a financial year is 20 days.

Note: The maximum amount is not reduced for a member on part-time leave without pay or on leave without pay (flexible service determination).

5. At the time of purchase, the amount of recreation leave credits that can be purchased by the member is reduced by each day the sum of the following exceeds 40 days.
 - a. The member's basic recreation leave credit.
 - b. The member's additional recreation leave credit.
 - c. The member's extra recreation leave credit.

Note: At the time of purchase a member must have regard to the maximum permitted number of days set out in subsection 4 above.

Examples:

1. A member's total recreation leave credit balance is 48 days. The 20 days of purchased recreation leave the member may purchase in a financial year is reduced by 8 days (the amount over 40). The maximum amount the member may purchase is 12 days (20 – 8).
2. A member has purchased 20 days in the current financial year and wants to purchase more. The member has to wait until the next financial year.

5.4.23 Approval to purchase recreation leave

1. In this section 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 approved. The supervisor must ensure the member understands they will be using their salary and Service allowance to pay for the purchased recreation leave credit.
3. The supervisor must consider whether operational requirements are likely to prevent the member to be granted the full amount of purchased recreation leave.

5.4.24 Payment

1. A member who has been approved to purchase recreation leave credits must pay the cost of those leave credits.
2. The member's fortnightly payment is calculated using the table in subsection 3.

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

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

Step	Action
1.	Add the member's annual salary and Service allowance. Notes: 1. Other allowances such as higher duties allowance, are not included. 2. The amount in this step may change in the event of promotion, demotion or increases to salary or Service allowance.
2.	Convert the outcome of Step 1 to a daily pay rate by dividing it by 365.
3.	Convert the outcome of Step 2 to an hourly rate by dividing by 8. Note: The rate is based on one full day of leave being equivalent to 8 hours.
4.	Multiply the outcome of Step 3 by the number of hours of leave that the member has been approved to purchase.
5.	Divide the outcome of Step 4 by the number of pay periods over which the member elected to make payments.
6.	The outcome of Step 5 is the amount of the member's payment for each of the pay periods in their application.

4. The amount of the payment is not reduced if the member is on part-time leave without pay or leave without pay (flexible service determination).

5.4.25 Credit of purchased recreation leave

1. This section applies to a member whose application is approved under this Division.
2. Purchased recreation leave credits are credited to the member on the same payday the payment for the leave is deducted from the member's pay.
3. The amount the member is credited each fortnight is calculated in accordance with the following table.

Step	Action
1.	Find the total number of hours of recreation leave credits that was approved to be purchased.
2.	Divide the outcome of Step 1 by the number of pay periods over which the member elected to pay for those hours.
3.	The outcome of Step 2 is the amount of leave credits (in hours) the member is credited each pay period.

4. A member is able to apply to use recreation leave credits as soon as it has been credited.

Example: A member chooses to purchase 96 hours of recreation leave, over 12 pays. The member is credited 8 hours of purchased recreation leave, at the same time the payment for those 8 hours is deducted from their pay, on each of the 12 paydays. The member is able to apply to use the leave as soon as it is credited.

5.4.26 Cancellation to the amount of purchased recreation leave

1. A purchased recreation leave arrangement will be cancelled from the time a member is on any of the following kinds of service.
 - a. Warlike service.
 - b. Non-warlike service.
 - c. Foreign service, as defined by section 23AG (7) of the *Income Tax Assessment Act 1936*, which could reasonably be expected be exempt from tax under sub-section 23AG of the *Income Tax Assessment Act 1936*.
2. A member may make a fresh application to purchase recreation leave when they are no longer on a type of service under subsection 1.
3. The member may cancel their purchased recreation leave arrangement made under section 5.4.24 if the arrangement was approved by their supervisor on or after 10 August 2017.

Note: A purchased recreation leave arrangement cancelled under this section does not affect recreation leave already purchased.

5.4.26A Administration of purchased recreation leave

1. A purchased recreation leave credits are administered in accordance with Division 7.

See: Division 7, Administration and payment for recreation leave
2. Purchased recreation leave credits cannot be sold back to the Commonwealth. This may also be known as cashing out.

Note: Unused purchased recreation leave credits may form part of a member's payment instead of recreation leave, on ceasing continuous full-time service.

See: Division 8 section 5.4.43, Payment or transfer of leave credit.

3 Section 5.4.33 (Grant of recreation leave)

At the end, add:

5.4.33A Order of use of credits ('leave take')

A grant of recreation leave reduces a member's combined recreation and war service leave credit balances in the following order.

Item	Order	Leave type
1.	First	War service leave credits. See: Part 8 subsection 5.8.6.1, War service leave and other leave.
2.	Second	Purchased recreation leave credits. See: Division 5, Purchased recreation leave
3.	Third	Recreation leave credits that may include extra recreation leave, additional recreation leave, and basic recreation leave.

4 Chapter 5 Part 4 Division 8 (Payment or transfer of recreation leave credit)

Omit the Division, substitute:

Division 8: Payment or transfer of recreation leave credit

5.4.40 Purpose

This Division sets out how recreation leave may be paid out or transferred to another Commonwealth entity instead of taken when a member ceases continuous full-time service.

5.4.41 Member this Division applies to

This Division applies to a member who ceases continuous full-time service, and includes the CDF.

Note: If the member has died, this Division is only used to work out the amount of payment due. The provision for payment is set out in section 1.6.4.

See: Chapter 1 Part 6 section 1.6.4, Payment of amounts on death of a member

5.4.42 Definitions

The following definitions apply in this Division.

Term	Definition in this Division
Accrued leave credit	Means the sum of leave credit accrued from the following types of accruable leave (measured in days). a. Additional recreation leave. b. Overseas additional recreation leave c. Basic recreation leave. d. Extra recreation leave. e. War service leave. Notes: 1. It does not include accrued long service leave. 2. Purchased recreation leave is not included. See definition for <i>purchased recreation leave credit</i> .
Commonwealth entity	Means a Commonwealth entity for the purposes of the <i>Public Governance, Performance and Accountability Act 2013</i> as in force from time to time. See: Section 10 of the <i>Public Governance, Performance and Accountability Act 2013</i>
Daily rate of salary	Means the daily rate of salary and Service allowance calculated under subsection 5.4.46.1
Daily rate of salary and allowances	Means the daily rate of salary and allowances calculated under subsection 5.4.46.2.

Purchased recreation leave credit	Means a member's unused purchased recreation leave credit measured in days. The hourly rate (under Division 5) is converted to a daily rate by multiplying the hourly rate by 0.125. Example: A member has 12 hours unused purchased recreation leave, multiplied by 0.125, equals 1.5 days. See: Division 5, Purchased recreation leave
Salary	Means whichever of the following is relevant on the day when the member ceases continuous full-time service. a. If the member held a substantive rank — the salary of their substantive position. b. If the member held a temporary or acting rank for less than one year on their last day of service — the salary of their substantive position. c. If the member held a temporary or acting rank for one year or more on their last day of service — the salary for the higher rank or position.

5.4.43 Election for payment or transfer of leave credit

1. A member may elect to take their **accrued leave credit** and **purchased recreation leave credit** in any of the following forms on ceasing continuous full-time service.
 - a. A payment for the full amount of their **accrued leave credit** and **purchased recreation leave credit**.
 - b. Transfer to their new **Commonwealth entity**, one of the following amounts.
 - i. All their **accrued leave credit** and **purchased recreation leave credit**.
 - ii. Part of their **accrued leave credit** and **purchased recreation leave credit**.
Note: For remaining credits that are not transferred, their leave credit will be a payment to the member under paragraph 1.a.
2. The election must be submitted in writing at least 30 days before ceasing continuous full-time service.
Note: If the member has not made an election 30 days before ceasing continuous full-time service, their leave credit will be a payment to the member under paragraph 1.a.
3. Once a member has made an election under subsection 1 it cannot be changed.
Exceptions: The member's leave is paid to the member under paragraph 1.a in either of the following events.
 - a. The member's offer of employment with the new agency is withdrawn.
 - b. The **Commonwealth entity** does not agree to the transfer.

5.4.44 Payment to member for *leave credit*

1. This section applies to a member who is to be paid an amount for all or part of their ***accrued leave credit*** and ***purchased recreation leave credit*** under paragraph 5.4.43.1.a.
2. The member is to be paid the sum of the following amounts.
 - a. An amount equal to the member's ***daily rate of salary and allowances*** for each day of ***accrued leave credit*** and ***purchased recreation leave credit*** to be paid.
 - b. An amount equal to two days' of the member's ***daily rate of salary and allowances*** for each five days of ***accrued leave credit*** to be paid.

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

Example: A member has 20 days ***accrued leave credit*** and 10 days ***purchased recreation leave credit*** that they elect to be paid for. The member is paid an amount equal to 38 days (20 + 10 + 8) of the member's ***daily rate of salary and allowances***.

Note: A member's ***daily rate of salary and allowances*** is calculated at subsection 5.4.46.2.

5.4.45 Transfer of leave credits and payment to new *Commonwealth entity*

1. This section applies to a member who elects to transfer all or part of their ***accrued leave credit*** and ***purchased recreation leave credit*** under paragraph 5.4.43.1.b and the new ***Commonwealth entity*** has agreed to the transfer.
2. The Department of Defence must pay the member's new ***Commonwealth entity*** the sum of the following amounts.
 - a. An amount equal to the member's ***daily rate of salary*** for each day of ***accrued leave credit*** and ***purchased recreation leave credit*** the member elected to transfer.
 - b. An amount equal to two days' of the member's ***daily rate of salary*** for each five days of ***accrued leave credit*** the member elected to transfer.

Note: A member's ***daily rate of salary*** is calculated at subsection 5.4.46.1.

Example: A member has 20 days ***accrued leave credit*** and 10 days ***purchased recreation leave credit*** that they elect to transfer to the new ***Commonwealth entity***. The following occurs.

- a. 30 days of credit is transferred.
 - b. An amount equal to 38 days of the member's ***daily rate of salary*** is paid to the member's new ***Commonwealth entity***. The extra eight days are derived from the extra two days for every five days of accrued leave credit.
3. The member's leave credits are transferred to the new ***Commonwealth entity***.

5.4.46 Calculation of payment or transfer rates

1. The following table sets out how to calculate the **daily rate of salary**.

Step	Action
1.	Find the annual rate of salary payable to the member and divide by 365.
2.	Find the annual rate of Service allowance payable to the member and divide by 365.
3.	Add the amounts of Steps 1 and 2. This is the daily rate of salary that applies to the member.

2. The following table sets out how to calculate the **daily rate of salary and allowances**.

Step	Action
1.	Find the annual rate of salary payable to the member and divide by 365.
2.	Find the annual rate of Service allowance payable to the member and divide by 365.
3.	Find the annual allowances the member would be eligible to receive on recreation leave, if it was taken on their last day of service. Add these amounts together and divide by 365. Exceptions: Service allowance, uniform allowance, rent allowance and executive vehicle allowance. Higher duties allowance is also an exception provided the member had not been continuously paid the allowance for one year or more on their last day of service. Note: Higher duties allowance is included if the member had been continuously paid the allowance for one year or more on their last day of service.
4.	Add the amounts in Steps 1 to 3 together. This is the daily rate of salary and allowances that applies to the member.

3. This subsection provides examples to demonstrate how to apply the calculations in subsections 1 and 2.

Example: On the last day of service a member's annual salary is \$86,831. They receive Service allowance of \$12,924 and maritime disability allowance of \$11,275. The member has 24 days of **accrued leave credit** and 10 days of **purchased recreation leave credit** on the last day of service. The member's **accrued leave credit** and **salary and allowances** are worked out as follows. (**Note:** the rates and leave days accrued used in this example are for example purposes only.)

- a. The member's **daily rate of salary** is calculated using the following steps.

Step	Action
1.	The member's annual salary is \$86,831. $\$86,831 \div 365 = \237.89
2.	The member gets \$12,924 Service allowance each year. $\$12,924 \div 365 = \35.41
3.	$\$237.89 + \$35.41 = \$273.30$ This is the daily rate of salary that applies to the member.

- b. The member's **daily rate of salary and allowances** is calculated using the following steps.

Step	Action
1.	The member's annual salary is \$86,831. $\$86,831 \div 365 = \237.89
2.	The member gets \$12,924 Service allowance each year. $\$12,924 \div 365 = \35.41
3.	The member gets \$11,275 annual allowances each year. $\$11,275 \div 365 = \30.89
4.	$\$237.89 + \$35.41 + \$30.89 = \304.19 This is the daily rate of salary and allowances that applies to the member.

5 Section 5.9.15 (Examination leave)

Omit, "five days", substitute "forty hours" (twice occurring).

6 Subsection 5.9.15.1 (Examination leave)

After the subsection, insert:

- 1A. Examination leave and another type of leave may not be granted on the same day.

Exception: Short absence may be granted on the same day as examination leave.

Part 2—Transitional provisions

1 Transitional – Purchased recreation leave

1. This section applies to a member who meets both the following conditions.
 - a. The member had an application for purchased recreation leave approved before the commencement of this Determination.
 - b. The member has not completed payment for the purchased recreation leave.
2. The member is required to make payments towards the purchased recreation leave as they were required to immediately before the commencement of this Determination.

2 Transitional – Payment or transfer of purchased recreation leave

1. This section applies to a member who meets all the following conditions.
 - a. The member had an application for purchased recreation leave approved before the commencement of this Determination.
 - b. The member has not completed fortnightly payments for the purchased recreation leave.
 - c. The member ceases continuous full-time service.
2. The method for which unpaid purchased recreation leave is recovered by the Commonwealth depends on what the member elects to do with their recreation leave credits. One of the following applies.
 - a. If the member elects to take a full payment under paragraph 5.4.43.1.a or a part payment under subparagraph 5.4.43.1.b.ii of Defence Determination 2016/19, *Conditions of service*, as in force immediately before the commencement of this Determination — the value of purchased leave that has not been paid for is deducted from the total amount payable to the member.

Example: A member elects to be paid out their recreation leave credits. Without the unpaid purchased leave payments, that payment would be \$2,000. The member has \$1,000 of unpaid purchased leave payments. The member gets a recreation leave payout of \$1,000.
 - b. If the member elects to transfer their recreation leave credits to another Commonwealth entity under subparagraph 5.4.43.1.b.i of Defence Determination 2016/19, *Conditions of service*, as in force immediately before the commencement of this Determination — the value of purchased leave that has not been paid for is a debt to the Commonwealth.

Example: A member elects to transfer all their recreation leave credits to another Commonwealth entity. They have unpaid purchased leave payments. The value of the unpaid purchased leave payments are a debt to the Commonwealth. The member can still transfer their leave.
3. The value of any purchased leave that has not been paid for and that exceeds the total amount payable to the member becomes a debt to the Commonwealth.

Example: A member elects to be paid out their recreation leave. Without the unpaid purchased leave payments, that payment would be \$2,000. The member has \$3,000 of unpaid purchased leave payments. They get no recreation leave payout, and they have a debt to the Commonwealth of \$1,000.