

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (ADF Military Factor Framework consequential amendments) Determination 2024 (No. 9)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (Defence Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AI Act).

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003* (Legislation Act). These instruments are also subject to the interpretation principles in the AI Act.

The Principal Determination is exempt from sunseting under item 21A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The exemption was granted as the instrument is a large and complex document that is subject to regular review and amendment. The exemption also provides certainty for members, stakeholders and administrators.

This Determination amends the Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as part of the member's conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligations and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

Purpose

The purpose of this Determination is to provide additional recreation leave to a member when they are in receipt of a military factor tier under the new Military Factor Framework. Additional recreation leave policy has been redesigned as a consequence of the new Military Factor Framework. In addition to the financial compensation that is provided through the Military Factor Framework, additional recreation leave is provided members to enable recovery from the effects of certain types of service over time.

The Military Factor Framework is a 12 tier allowance framework that compensates members for hardships associated with service in specific environments such as sea, flying, field, as well as other specific types of duty. The Military Factor Framework takes effect on 29 August 2024.

This Determination also makes technical amendments as a consequence of the introduction of the Military Factor Framework and amendments made to Defence Force Remuneration Tribunal (DFRT) Determination No. 11 of 2013.

Operational details

Details of the operation of the Determination are provided at annex A.

Incorporation by reference

The Determination makes references to sections of the *Defence Determination 2016/19, Conditions of service*. This Instrument is incorporated into this Determination as in force from time to time.

For the purpose of adopting DFRT determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act.

Human rights compatibility

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

Review options

Decisions that are made under the Principal Determination, as amended by this Determination, may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the *Defence Regulation 2016*. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Before this Determination was made, consultation was undertaken with Navy, Army and Air Force.

The rule maker was satisfied that further consultation was not required.

Approved by: **BRIG Kirk Lloyd**
Director General
People Policy and Employment Conditions

Authority: Section 58B of the
Defence Act 1903

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Operational details

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this instrument commences on commencement of DFRT Determination No. 6 of 2024.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides that 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—ADF Military Factor Framework consequential amendments

Item 1 repeals and substitutes paragraph 2.3.5.5.d of the Principal Determination which provides the definition of allowances for the purpose of a redundancy benefit. The paragraph has been amended to reference specific allowances which are provided for under DFRT Determination No. 6 of 2024. These allowances replace the previously specified allowances under DFRT Determination No. 11 of 2013 as a consequence of the introduction of the new ADF Military Factor Framework which took effect on 29 August 2024.

Item 2 repeals and substitutes section 3.2.7AA of the Principal Determination which provides how salary and allowances for a member who is on a flexible service determination are to be adjusted to account for any nonworking periods the member has as part of their flexible working agreement. The section has been separated into two sections: Section 3.2.7AA applies to salary and Officer Aviation Remuneration Structure Allowance, and the new section 3.2.7AB has been added for allowances payable under DFRT Determination No. 6 of 2024 as a consequence of the introduction of the new ADF Military Factor Framework.

Item 3 amends section 5.4.6 of the Principal Determination to remove the definition of 'special service'. The definition is no longer required as a consequence of the changes made by items 4 and 5 of this determination, and the introduction of the new ADF Military Factor Framework.

Item 4 repeals and substitutes section 5.4.9 of the Principal Determination which provides the purpose of additional recreation leave. The changes made to this section amend the purpose statement to promote the use of contemporary drafting styles and improve readability.

Item 4 also inserts section 5.4.10 into the Principal Determination which provides additional recreation leave credits to a member when they are in an allowance group under the new Military Factor Framework. The new section provides for the redesigned additional recreation leave policy which was required as a consequence of new ADF Military Factor Framework.

Item 5 repeals the following sections from the Principal Determination as a consequence of the changes made by item 1 of this Schedule and new ADF Military Factor Framework.

- Section 5.4.11 which provides how additional recreation leave accrues.
- Section 5.4.12 which provides the maximum annual additional recreation leave credit a member can receive in a financial year for sea service, field service, flight duties and special service.
- Section 5.4.13 which provides additional recreation leave credits for members when undertaking sea service.
- Section 5.4.14 which provides additional recreation leave credits for members when undertaking field service.
- Section 5.4.15 which provides additional recreation leave credits for members when undertaking flight duties.

- Section 5.4.16 which provides additional recreation leave credits for members when undertaking special service duties associated with Special Forces and clearance diving.

Item 6 amends section 9.5.37 of the Principal Determination which provides when a member is not eligible to receive incidentals as part of the travelling allowance. The section has been amended to update the reference to “DFRT Determination No. 11 of 2013” to “DFRT Determination No. 6 of 2024” as a consequence of the introduction of the new ADF Military Factor Framework.

Schedule 2—Transitional provision

Clause 1 provides the definitions which apply to this Schedule.

Clause 2 provides that, despite subsection 5.4.10.2 of the Defence Determination, a member who is eligible for Training Sustainment Allowance accrues 0.1 of a credit of additional recreation leave for each day they are eligible for the allowance.

Clause 3 provides that, despite subsection 5.4.10.2.b of the Defence Determination, a member who is eligible for a Special Duty Allowance accrues additional recreation leave credits at the rate specified by paragraph 5.4.10.2.a of the Defence Determination for each day they are eligible for the allowance.

Clause 4 provides that this transitional provision is revoked and ceases to have effect on a date that is to be specified by Director General, People Policy and Employment Conditions by notifiable instrument.

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Statement of Compatibility with Human Rights

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

Overview of the Determination

The purpose of this Determination is to provide additional recreation leave to a member when they are in receipt of a military factor tier under the new Military Factor Framework.

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 ensures just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

Assessment of compatibility

Schedule 1 is compatible with human rights as it provides additional recreation leave credits to members to enable recovery from the hardships associated with service in specific environments such as sea, flying, field, as well as other specific types of duty as a part of their conditions of service.

Conclusion

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