

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination (No. 1) 2025

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* 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*. 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 do the following:

- Amend increment placement provisions relating to Navy specialist aviation officers to remove the requirement for members to have 12 months experience on the aircraft following operational flying training before being placed within the Officer Aviation Pay Structure.
- Amend continuation bonus provisions to clarify how effective service is treated when determining a member's eligibility for a bonus.
- Contemporise the language used to describe when a member marries, or has their partnership with a person recognised.
- Expand the definition of close family member to include grandchildren for remote location leave travel and to clarify how a member's travel benefits are reduced when travelling between certain locations.
- Remove tables in Chapters 1 to 5 of the Defence Determination to reflect contemporary drafting standards and improve readability.
- Extend the salary non-reduction period for RAAF Flight Engineers from 5 to 8 years.
- Amend the minimum number of consecutive days that an ADF member needs to perform higher duties for in order to be eligible for higher duties allowance.
- Make a range of technical amendments that include updating section headings, updating cross reference, fixing typographical errors and making minor amendments to promote consistency in the way terms are references throughout the Principal Determination.

### Operational details

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

### Retrospective application

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

## 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. Also, a person may make a complaint to the Defence Force Ombudsman.

## Consultation

Before this Determination was made, the consultation was undertaken with:

- Schedule 1: Army, Navy and Air Force on the changes made by items 5 to 10 and 26 to 30. The rule maker was satisfied that the remaining changes made by the Schedule are technical in nature and consultation was not required.
- Schedule 2: The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.
- Schedule 3: Air Force.
- Schedule 4: Pay Systems Analysis and Intelligence and People and Pay Systems Branch.

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

**Approved by:**

**Sarah Kate McGregor**  
Acting Director General  
People Policy and Employment Conditions

**Authority:**

Section 58B of the  
*Defence Act 1903*

**Defence Determination, Conditions of service Amendment Determination (No. 1) 2025*****Operational details***

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

Section 2 provides the following commencement dates:

- Sections 1 to 4 of the Determination commences on the day the instrument is registered.
- Schedules 1 to 6 of the Determination commence on 13 February 2025.

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—Miscellaneous amendments***

Items 1, 2, 4, 13, 39 make technical amendments to the section heading of simplified outlines of Part 5 of Chapter 1, Part 4 of Chapter 2, Division 5 of Part 4 of Chapter 5, and Part 8 of Chapter 12 of the Principal Determination. The amendments add information to the section heading to inform the reader of the scope of the simplified outline.

Items 3, 18, 31 to 34, 38 and 40 to 46 amend various provisions within the Principal Determination to make technical amendments that update cross references, fix typographical errors and make minor amendments to promote consistency in the way terms are referenced throughout the Principal Determination.

Items 5 to 10 amend various provisions in Part 2 of Chapter 3 of the Principal Determination relating to increment placement for Navy specialist aviation officers. The amendments remove the requirement for members to have 12 months experience on the aircraft following operational flying training before being placed within the Officer Aviation Pay Structure. Technical amendments to promote the use of contemporary drafting styles and improve readability have also been made.

Items 11 amends section 3.4.5 of the Principal Determination which provides what day a member's agreed period of service commences. Paragraph 3.4.5.1.a. provides that one of the days it can start is the day after the member has completed 4 consecutive years of effective service. The amendments made by this item remove the requirement for the 4 years of effective service to be consecutive.

Item 12 amends section 3.4.10 of the Principal Determination which provides when a member is eligible to be offered a continuation bonus. The section provides that a member can be offered a continuation bonus the day that is 90 days before they complete 4 years of continuous effective service and subsequently provides that a member ceases to be eligible to be offered a continuation bonus the day they complete 4 years of continuous effective service. The amendments made by this item remove the requirement for the effective service to be continuous.

Items 14 to 17, 19 to 21, 23, 24, 36 and 37 amend various provisions within the Principal Determination to promote consistency in how a member's marriage or partnership with a person is described. Reference to marriage and partnership have been replaced with 'recognition of a relationship' in various ways, relevant to the context of the provision.

Item 22 repeals and substitutes subsection 9.3.5.1 of the Principal Determination which provides that members and their resident family authorised to travel under the Division have the basic benefits set out in Part 1 of Chapter 9. The substituted subsection clarifies that the basic benefits does not include baggage benefits.

Item 25 repeals section 9.3.13 of the Principal Determination which provides that a person who travels on recognition of their relationship is not eligible for baggage benefits. The repeal of the section is a consequence of the changes made by item 22 of this Schedule.

Item 26 amends section 9.4.25 of the Principal Determination which provides the definition of close family member for the purpose of remote location leave travel. The definition has been amended to include a grandchild.

Items 27 to 30 repeal and substitute subsections 9.4.26.2B, 9.4.27.2B, 9.4.28.2B and 9.4.30.2B of the Principal Determination which provide the eligibility for the remote location leave travel benefit when a member flies or drives between locations. These subsections have been amended to clarify that the travel benefit is only reduced by one benefit when more than one person travels in the same vehicle when driving between remote locations.

Item 35 amends section 9.6.5 of the Principal Determination which provides which the members to which Chapter 9 Part 6 applies. This a technical amendment to remove unnecessary a cross-referencing.

Excluding items 11, 12 and 26 to 30, the remaining amendments made under this Schedule are technical in nature and do not alter the underlying policies, or the benefits which are currently provided.

### Schedule 2—Tables amendments

Items 1 to 10 make technical amendments to the following provisions within the Principal Determination to improve conciseness and convert tables into text form to improve readability within the respective provisions.

- Section 1.3.5, which provides the definition of a serious illness.
- Subsection 2.1.4.2, which provides eligibility for a person travelling to a Defence Force Recruiting Centre with financial assistance.
- Section 2.3.23, which provides the amount of special benefit a member for which a member can be eligible.
- Section 4.5.9, which provides the rates of meal allowance.
- Subsection 5.5.14.1, which provides for the accrual of long service leave as a member of the Reserves.
- Subsection 5.8.9.2, which provides for the amount a member can be paid instead of taking war service leave during a member's service.
- Subsection 5.8.10.2, which provides for the amount a member can be paid instead of taking war service leave after the member has left continuous full-time service.
- Subsection 5.9.14.3, which provides the definition of an approving authority for the CDF, Vice CDF or a Service Chief taking special leave for private purposes.
- Subsection 5.11.10.2, which provides how long of a short absence a member can be granted for a removal.
- Section 6.1.7, which provides the definition of the number of a member's current removal.

The amendments made by this Schedule are technical in nature and do not alter the underlying policies, or the benefits which are currently provided.

### Schedule 3—RAAF flight engineer non-reduction period amendments

Item 1 amends various table items in Annex 3.2.B of the Principal Determination, which provides the salary non-reduction for members. The amendment extends the existing non-reduction period for flight engineers from 5 years after the day of remuster to 8 years after the day of remuster.

### Schedule 4—Higher duties allowance amendments

Item 1 amends subsection 4.1.5.2 of the Principal Determination which provides when an approver must not approve a period of higher duties. Paragraph 4.1.5.2.a, which provides that an approver must not approve a period of higher duties of less than 10 consecutive days, has been amended reduce the period

from less than 10 consecutive days to less than 5 consecutive days. In effect, this means a member can now be approved to receive higher duties allowance for a period of 5 consecutive days or more.

#### Schedule 5—Transitional Provisions

Clause 1 defines Defence Determination 2016/19 for the purpose of this Schedule, which is incorporated as in force immediately before the commencement of this Determination.

Clause 2 provides that the changes made by items 12 and 13 of Schedule 1 of this Determination apply to a member as though they had been in effect from 1 July 2023.

Clause 3 provides the following:

- Subsection 1 provides that the clause applies to a member who had previously been eligible for the salary non-reduction period and their period of eligibility has ended.
- Subclause 2 provides the salary non-reduction period for the previously eligible member is eligible as if the member's eligibility never ended.

**Defence Determination, Conditions of service Amendment Determination (No. 1) 2025****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 do the following:

- Amend increment placement provisions relating to Navy specialist aviation officers to remove the requirement for members to have 12 months experience on the aircraft following operational flying training before being placed within the Officer Aviation Pay Structure.
- Amend continuation bonus provisions to clarify how effective service is treated when determining a member's eligibility for a bonus.
- Contemporise the language used to describe when a member marries, or has their partnership with a person recognised.
- Amend provisions which provide travel benefits to a member when they gain a partner. The amendments combined the rules relating to partners who are either in Australia or outside of Australia at the time of become a partner. The meaning of 'point of entry', used when a member's partner lives outside of Australia at the time they become a partner, is also clarified.
- Expand the definition of close family member to include grandchildren for remote location leave travel and to clarify how a member's travel benefits are reduced when travelling between certain locations.
- Remove tables in Chapters 1 to 5 of the Defence Determination to reflect contemporary drafting standards and improve readability.
- Extend the salary non-reduction period for RAAF Flight Engineers from 5 to 8 years.
- Amend the minimum number of consecutive days that an ADF member needs to perform higher duties for in order to be eligible for higher duties allowance.
- Make a range of technical amendments that include updating section headings, updating cross reference, fixing typographical errors and making minor amendments to promote consistency in the way terms are references throughout the Principal Determination.

**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 items 11, 12 and 26 to 30 make amendments that expand the eligibility of benefits for members and are therefore compatible with human rights. The remaining amendments do not change the underlying policies or benefits provided to members as a part of their conditions of service. As such, they do not engage with any of the applicable rights or freedoms.

Schedule 2 makes amendments to the Principal Determination do not change the underlying policies or benefits provided to members as a part of their conditions of service. As such, they do not engage with any of the applicable rights or freedoms.

Schedule 3 is compatible with human rights as it provides members with salary protection resulting from amendments to the employment categories, giving members an opportunity to meet the requirements for salary progression. This prevents unjust conditions of work in salary reductions as a result of external employment category changes as a part of their conditions of service.

Schedule 4 is compatible with human rights as it provides access to higher duties allowance earlier than what they would have if the amendment were not made. This provides a beneficial outcome to members as a part of their conditions of service and is compatible with human rights.

### **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*.