

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Continuation Bonus) Determination (No. 2) 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 create the continuation bonus to promote the retention of ADF personnel at the highest ADF workforce separation points and increase the average length of ADF service. The bonus provides a payment to members who agree at specific career decision points, to continue to serve for an additional 3 years in the Permanent Forces.

The continuation bonus was announced as part of a suite of initiatives under the Defence Workforce Plan 2024 to address recruitment and retention of the workforce, and build on extant reforms the Government introduced to stabilise the ADF workforce.

This amendment replaces the continuation bonus pilot that ends on 30 June 2025. Rules relating to the continuation bonus pilot will continue to apply to members who have accepted an offer under the pilot.

Operational details

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

Incorporation by reference

The Determination refers to sections of the Defence Act, the *Defence Force Discipline Act 1982* and the Defence Regulation 2016. These Instruments are incorporated into the Determination as in force from time to time. Section 1.2.5A of the Principal Determination specifies that a reference to an Act of Parliament or a legislative instrument to which section 14(3) of the AI Act applies are incorporated as in force from time to time, unless otherwise stated.

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 the Directorate of Remuneration Operations, Workforce Strategy Branch and the Recruitment and Retention Team.

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

Approved by:

Sarah McGregor
Acting 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 Determination commences on the day the instrument is registered.

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—Continuation Bonus amendments

Item 1 repeals and substitutes Part 4 of Chapter 3 of the Principal Determination, which provides the rules for the pilot scheme continuation bonus. The pilot continuation bonus is replaced with a new continuation bonus scheme, which enables up to two opportunities for a member to receive a continuation bonus. Specifically, the new Part does the following:

Division 1: General Provisions

Subdivision 1: Preliminary

- Section 3.4.1 provides a simplified outline of the continuation bonus. Simplified outlines are included to assist readers to understand the substantive provisions. The outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.
- Section 3.4.2 provides definitions that apply in the Part. Among other things, the definitions refer to military employment classifications, either by series or specifically. These are terms commonly understood by members and relate their employability and employability.
- Section 3.4.3 provides a definition for ‘commencement day,’ which applies in relation to the agreed period of service. There are two different commencement days: one for continuation bonus offer 1 and the other for continuation bonus offer 2. The commencement day depends on a number of factors, including the number of years of effective service, and the completion of any service obligation imposed when the member joined the ADF.

If either section 3.4.12 or 3.4.17 applies because of a change in a member’s military employment classification, the member’s commencement day for their agreed period of service may be before the member makes a valid acceptance. In practical terms, the agreed period of service a member must complete after they accept the continuation bonus is reduced, as it considered they have already served some of that period.

- Section 3.4.4 defines ‘valid acceptance,’ which is made in response to a valid offer. The definition includes details of when and how the acceptance must be made and additional information the member must provide in relation how they wish to receive the continuation bonus. Due to the limited duration of the continuation bonus, an offer cannot be accepted after 30 December 2028, which is 6 months after the last offer can be made.
- Section 3.4.5 defines ‘valid offer’ and includes how the offer must be made and information that must be included in the offer. An offer may be made as early as 1 April 2025. This enables an administrative transition from the pilot continuation bonus, which is being repealed by this item, to the new continuation bonus.

Subdivision 2: Definition of Effective Service

- Section 3.4.6 defines ‘effective service’ for a day on which a member is not the subject of a flexible service determination. For acquitting the agreed period of service, effective service only includes days in the Permanent Forces. However, for other purposes, it includes any days on which the member may be providing continuous full-time service as a member of the

Reserves. If a member is on leave without pay, the member accrues 1 day of effective service for each day until, and including the 21st day. After the 21st day of leave without pay, the member is not providing effective service.

- Section 3.4.7 defines 'effective service' for a day on which a member is the subject of a flexible service determination. For acquitting the agreed period of service, effective service only includes days in the member's pattern of service in the Permanent Forces. Days within a member's pattern of service that the member is on leave without pay is treated the same as if the member were not on a flexible service determination.

In subsection 3 of both section 3.4.6 and section 3.4.7, a member is not providing effective service if they are in custody, determination, imprisoned or suspended from duty. If the member is suspended from duty without pay, they cease to provide effective service because they are not receiving salary, which is an exclusion under subsection 2 of each of the respective sections.

Division 2: Continuation Bonus Offer 1

Subdivision 1: Application of this Division

- Section 3.4.8 identifies members whom Division 2 applies. It includes members who, between 1 July 2025 and 30 June 2028, complete both 4 years of effective service and any service obligation imposed on them when they first joined the Permanent Forces, or a member would have done so had service reasons not prevent them from doing so. This would occur, for example, in cases the member was delayed being able to commence their service in the Permanent Forces due to a service reason.
- Section 3.4.9 identifies members whom Division 2 does not apply. This includes members who have previously received a continuation bonus under this Part or under pilot continuation bonus, as repealed by this Determination, lateral recruits (members who joined the ADF from other countries under specified visa classes) and members who have previously left the ADF having completed at least 90 days of service and subsequently re-joined the Permanent Forces.

Subdivision 2: Eligibility for continuation bonus offer 1

- Section 3.4.10 identifies members who are eligible to receive an offer of continuation bonus offer 1. To be eligible to be given an offer of continuation bonus offer 1, a member must hold a specified military employment classification, be considered to be a fit and proper person, and have discussed their continued service with the recommending authority.

Subdivision 3: When a valid offer of continuation bonus offer 1 can be made

- Section 3.4.11 specifies the general period in which a valid offer of continuation bonus offer 1 must be made. This includes within 90 days of members completing 4 years of effective service or their service obligation that was imposed when they first joined the ADF. Generally, a member is not able to receive a valid offer of continuation bonus offer 1 after they have completed the later of 4 years of effective service or the day they complete their service obligation imposed on them when they first joined the ADF. If a member should have received an offer of continuation bonus offer 1, but did not due to an omission, the member may still receive an offer up to 90 days after the omission was identified. An omission may arise if the member has satisfied the eligibility criteria, but is not identified in time to make a valid offer.
- Section 3.4.12 specifies the period in which a valid offer may be made to a member who holds a military employment classification of J34 or J40 at the time the general rule in 3.4.11 would have applied to them. If the member's military employment classification changes to a classification in the J1, J2 or J3 series other than a J34, the member is able to be made a valid offer of continuation bonus offer 1 within 90 days after their military employment classification changes.

Division 3: Continuation bonus offer 2

Subdivision 1: Application of this Division

- Section 3.4.13 identifies members whom this Division applies, including members who complete between 1 July 2025 and 30 June 2028 both 7 years of effective service and 3 years of effective service after completing any service obligation imposed on them when they last joined the Permanent Forces. The Division also applies to a member who did not meet these requirements,

but would have done so had service reasons not prevent them from doing so. This would occur, for example, in cases the member was delayed being able to commence their service in the Permanent Forces due to a service reason.

- Section 3.4.14 identifies members whom this Division does not apply, including members who have previously received a continuation bonus under this Division. However, a member who has received a continuation bonus under this Division. However, a member may receive a continuation bonus under this Division if they have received a continuation bonus under Division 2 of this Determination or under the pilot continuation bonus.

Members who are lateral recruits and members who re-joined the permanent forces having previously been a member of the permanent forces are also not eligible for continuation bonus offer 2 if they hold a specific rank.

Subdivision 2: Eligibility for continuation bonus offer 2

- Section 3.4.15 identifies members who are eligible to receive an offer of continuation bonus offer 2. To be eligible to be given an offer of continuation bonus offer 2, a member must hold a specified military employment classification, be considered a fit and proper person, and have discussed their continued service with the recommending authority.

Subdivision 3: When a valid offer of continuation bonus offer 2 can be made

- Section 3.4.16 specifies the general period in which a valid offer of continuation bonus offer 1 must be made. This includes are within 90 days of members completing the latter of 7 years of continuous effective service, or 3 years after completing a service obligation imposed when they last joined the ADF. Generally, a member is not able to receive a valid offer of continuation bonus offer 1 after they have completed the later of 7 years of effective service or the day they complete their service obligation imposed on them when they first joined the ADF. If a member should have received an offer of continuation bonus offer 1, but did not due to an omission, the member may still receive an offer up to 90 days after the omission was identified. An omission may arise if the member has satisfied the eligibility criteria, but is not identified in time to make a valid offer.
- Section 3.4.17 specifies the period in which a valid offer may be made to a member who holds a military employment classification of J34 or J40 at the time the general rule in 3.4.16 would have applied to them. If the member's military employment classification changes to a classification in the J1, J2 or J3 series other than a J34, the member can be made a valid offer of continuation bonus offer 2 within 90 days after their military employment classification changes.

Division 4: Acceptance of a valid offer

- Section 3.4.18 provides that a member who has received a valid offer can make a valid acceptance of a continuation bonus. This applies to both continuation bonus offer 1 and continuation bonus offer 2.
- Section 3.4.19 identifies members who cannot make a valid acceptance of a continuation bonus. This includes members while they hold a military employment classification of J34 or J40. If their military employment classification changes, they may be able to accept a valid offer.

Members who have less than 3 years to serve in the Permanent Forces due the end of their fixed period of service, their retirement age or a direction allowing them to service beyond their retirement age are also not eligible to make a valid acceptance an offer of the continuation bonus. However, if a member changes their fixed period of service or gets an extension to serve beyond their retirement age, so that they can still provide 3 years of service, they will be able to make a valid acceptance.

Division 5: Payment, cessation and repayment of the continuation bonus

- Section 3.4.20 identifies members who can receive the continuation bonus payment. To receive the payment, the member must have made a valid acceptance for the continuation bonus. However, in some circumstance's the member may be able to receive the payment if they have been unable to make a valid acceptance and the decision maker is satisfied that paying the continuation bonus is reasonable after having considered a number of factors.

- Section 3.4.21 specifies how the continuation bonus is to be paid. A member is able to choose to receive the bonus in 1 or 2 payments. The first or full payment is payable from the later of the commencement day of the agreed period of service as specified in the valid offer and the day they make a valid acceptance of an offer. If the commencement day changes because of the delay in completing another service obligation, the day the continuation bonus becomes payable does not change.

If the member chooses to receive the bonus in 2 payments, the second half of the bonus is payable 12 months after the first payment. However, if the member ceases to be a member of the Permanent Forces under the Defence Regulation due to medical unfitness or redundancy, the second payment is payable from the day their service is terminated. In any other circumstance, section 3.4.22 will apply and the member will cease to be eligible to receive the second payment.

- Section 3.4.22 provides when a member ceases to be eligible for the continuation bonus. This does not apply if the member's service in the Permanent Forces is terminated under the Defence Regulation for a reason of medical unfitness or redundancy. A member may cease to be a member under Part VIIIA of the Defence Act, under the Defence Regulation or under the Defence Force Discipline Act.
- Section 3.4.23 provides the circumstances in which a member must repay the continuation bonus. This includes when the member takes action to end their service in the Permanent Forces before they complete their agreed period of service or if their service in the Permanent Forces is terminated on performance or behaviour grounds, or they are dismissed under the Defence Force Discipline Act.

Schedule 2—Transitional provisions

Clause 1 defines the Defence Determination for the purpose of this schedule as Defence Determination 2016/19, Conditions of service in force immediately before the commencement of Schedule 1 of this Determination.

Clause 2 provides savings provisions as a consequence of the changes made by Schedule 1 of this Determination. Specifically, clause 2 does the following:

- Saves section 3.4.10 of the Defence Determination 2016/19 until 30 June 2025. This enables valid offers of the continuation bonus to be made to members under the pilot continuation bonus until 30 June 2025 despite the section being repealed.
- Saves Part 3 of Chapter 3 of the Defence Determination, other than section 3.4.10 of the Determination. This enables the rules of the pilot continuation bonus to continue to apply to members who have accepted an offer under the repealed rules. This provides clarity to members about the rules that apply to them, ensuring that the rules under which they accepted the continuation bonus have not changed. These rules will continue to apply until all members who have accepted a continuation bonus under the pilot continuation bonus have completed their agreed period of service.

***Defence Determination, Conditions of service Amendment (Continuation) Determination (No. 2)
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 create the continuation bonus to promote the retention of ADF personnel at the highest ADF workforce separation points and increase the average length of ADF service. The bonus provides a payment to members who agree at specific career decision points, to continue to serve for an additional 3 years in the Permanent Forces.

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 members with a payment as a part of their conditions of service if they continue to serve an additional 3 years of service after certain career decision points.

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*.