

EXPLANATORY STATEMENT

Defence Determination 2016/19

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

Purpose

This Determination has the following four purposes.

- It implements a new Principal Determination, 2016/19, *Conditions of service* (new Principal Determination), which sets out the provisions on ADF conditions of service. This new Principal Determination replaces Defence Determination 2005/15, *Conditions of Service*, as amended.
- It repeals Defence Determination 2005/15, Conditions of service (the former Principal Determination), made under section 58B of the *Defence Act 1903*.
- It provides a scheme of transitional and savings provisions that will preserve accrued rights and liabilities under the former Principal Determination. The provisions also allow for eligibility that started under the former Principal Determination to continue, where applicable, under the new Principal Determination.
- It removes provisions relating to Australian Defence Force Cadets inline with the amendment to the *Defence Act 1903* made by the *Defence Legislation Amendment (First Principles) Act 2015* to commence on 1 July 2016. The *Defence Legislation Amendment (First Principles) Act 2015* substitutes new arrangements for the direction and administration of ADF Cadets. Section 58B will no longer have authority to make determinations relating to ADF Cadets.

As under the former Principal Determination, where entitlements, benefits or member liabilities (such as contributions) are subject to the discretion of the Chief of the Defence Force (CDF), criteria are provided where appropriate to guide the exercise of the discretion. Adverse decisions are subject to the redress of grievance process under the *Defence Force Regulations 1952*, and to review by the Defence Force Ombudsman.

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

Section 2 of this Determination provides that sections 1 to 3 and Schedule 1 of the Determination commences on 30 June 2016 and Schedule 2 of the Determination commences on 1 July 2016.

Section 3 of this Determination provides Schedules 1 and 2 of this Determination.

Schedule 1 deals with the repeal, transitional and savings provisions for the former Principal Determination, 2005/15, *Conditions of Service*.

Section 1 repeals the former Principal Determination 2005/15, *Conditions of Service*.

Section 2 sets out the transitional and savings provisions in relation to the commencement of the new Principal Determination, as follows:

- Subsection 2.1 defines certain terms used in the transitional and savings provisions. The former Principal Determination and its predecessors, Defence Determination 2000/1, *Conditions of Service*, and Defence Determination 2003/21, *Conditions of Service*, are referred to. The reason for this is that for some benefits eligibility may arise under one determination, and continue to exist by reason of a transitional or saving provision through successive determinations. Listing the Principal Determinations in this way makes that intention clear to persons researching the source of the benefit.

- Subsection 2.2 provides that a person is taken to comply with eligibility conditions under the new Principal Determination if the person complied with the eligibility conditions for a corresponding benefit or liability under the former Principal Determination. Any approval exercised under the former Principal Determination is also taken to be exercised under the new Principal Determination.
- Subsection 2.3 maintains the authority and status of decisions made by persons whom the Chief of the Defence Force (CDF) authorised to exercise similar powers for and on behalf of the CDF in relation to discretions under the former Principal Determination.
- Subsection 2.4 and 2.5 make it clear that this Determination does not preserve or maintain the monetary amount or value of a person's former benefit if the amount or value is subsequently changed by an amendment to the new Principal Determination.
- Subsection 2.6 states that these provisions do not preserve or maintain the person's eligibility or liability if there is a subsequent change of the circumstances of the person or their dependants that would end or vary the person's eligibility or liability.

Schedule 2 contains the substantive provisions of this Determination, which set out a range of benefits for members and their families.

The changes between the new Principal Determination and the former Principal Determination, and an outline of the provisions contained in each Chapter of the new Principal Determination is as follows.

Structural improvements

The new Principal Determination is intended to be policy neutral; however, some structural and policy changes have been made between the new Principal Determination and the former Principal Determination. These changes include the following.

- The internal structure of the Chapters has been revised to renumber Parts, Divisions and sections to remove most alphabetical numbering.
- The term 'clause' has been replaced by 'section' to better reflect best practice legislative drafting standards.
- Where relevant, the term 'entitlement' (and its derivatives) has been replaced by the terms 'benefit' or 'eligibility' dependent on the use of the term in the policy. This change is to clarify that some benefits in this new Principal Determination are available to members who meet eligibility conditions, rather than vested as entitlements for all members.
- Provisions relating to the reimbursement of certain expenses for home purchase or sale have been moved from Chapter 6 (Relocation on posting within Australia) to Chapter 7 (Housing and meals). These provisions assist a member to purchase their own home and are relevant to the Housing Chapter of the new Principal Determination.
- The provision of 'overseas living allowance' in Chapter 15 Part 2 has been amended to 'overseas living allowances' to reflect that this is a package of allowances and not a single allowance.
- Provisions relating to ADF Cadets have been removed from the new section 58B Principal Determination. Changes made to the *Defence Act 1903* by the *Defence Legislation Amendment (First Principles) Act 2015* will provide new direction and administration arrangements for ADF Cadets, commencing on 1 July 2016.
- A provision has been included under Chapter 1 Part 2 section 1.2.5 which allows the Assistant Secretary People Policy and Employment Conditions to approve forms that are to be used by applicants for benefits under this Determination. Some forms are included in the new Principal Determination for the convenience of the reader; subsection 1.2.5.2 makes it clear that these forms are approved for the purposes of subsection 1.2.5.1 of this Determination.

Some of the material contained in the new Principal Determination is of a purely administrative character. In order to maintain the symmetry of Part numbering between this Determination and the Australian Defence Force Pay and Conditions Manual (the Manual), administrative notes reserving some Parts and Divisions have been included in this Determination, notes of this kind are listed in Attachment A. For example, an administrative note has been included to refer to Chapter 4 Part 2 in the Manual, this Part sets out the consolidated determination on ADF salary-related allowances made by the Defence Force Remuneration Tribunal (DFRT) under section 58H of the Act. The Manual contains the consolidated section 58B and 58H Determinations, and includes other administrative and navigational aids to assist administrators and members.

Effect of the provisions

Chapter 1 of this Determination deals with formal and preliminary matters, including the general application provision (section 1.2.2). It also sets out the special meanings of words and phrases used in the new Principal Determination, and includes a separate Division dealing with interpretation in relation to members' dependants. Mechanisms are provided for dealing with a range of general matters such as overpayments, calculation of fortnightly and daily rates, and joint entitlements where a member's spouse or partner is also an ADF member.

Chapter 2 draws together provisions relevant to joining and leaving the ADF. These include allowances for applicants and an amount covering any loss of wages or salary which arises because they have to attend a recruiting centre. The Chapter also authorises assistance with the transition back into civilian employment, and termination payments. The provisions also cover a member's rights to certain conditions of service on movement under section 72 of the *Public Service Act 1999* resulting from administrative change or reorganisation.

Chapter 3 deals with matters relating to salary. The provisions include increments and related matters, retention and completion benefits and transitional salary benefits provided to protect members affected by the restructure of their employment category.

Chapter 4 deals with various allowances and reimbursements provided for ADF members in the course of their service. These include:

- higher duties allowance;
- various location allowances (including district allowance and allowances for Antarctic service);
- meal allowance;
- refresher training assistance for medical and dental officers;
- some aspects of remuneration for senior officers;
- the reimbursement of extra risk premiums for life insurance; and
- certain payments for Reservists.

Chapter 5 deals with matters relating to leave. The provisions authorise:

- recreation leave;
- long service leave;
- maternity and parental leave;
- medical absence;
- war service leave;
- other more limited forms of paid leave (such as special leave and carer's leave);
- leave without pay (including part-time leave without pay for the purpose of a period of part-time duty); and
- public holidays within Australia.

Chapter 5 also provides for members who wish to purchase additional recreation leave and for members who have had their leave cancelled. It provides reimbursement of costs to members who are recalled from approved leave.

Chapter 6 draws together provisions relating to the relocation of members and their dependants on posting within Australia. The provisions cover:

- relocation allowances;
- removal and storage benefits in various situations, including related childcare costs;
- reimbursement of expenses for pet relocation;
- insurance and indemnity covering removals; and
- reimbursement for certain losses on the sale of furniture and effects as well as vehicles.

Chapter 6 also provides for payment of expenses incurred where a new posting has been cancelled at short notice for Service reasons.

Chapter 7 deals with the provision of housing assistance, utilities and meals. The housing assistance available to members includes:

- temporary accommodation allowance;
- living-in accommodation;
- choice accommodation;
- Service residences; and
- rent allowance for privately rented dwellings.

Chapter 7 also sets out the limits of Commonwealth assistance and the various contributions that members are liable to pay to the Commonwealth for these forms of assistance. Provision is included for food allowances for some members in limited circumstances. Provisions relating to the reimbursement of certain expenses for home purchase or sale have been moved from Chapter 6 into Part 3 of this Chapter.

Chapter 8 deals with conditions of service relating to a member's dependants. The provisions include:

- reimbursement of education costs for a member's child where a member is posted within Australia;
- reimbursement in place of a child's scholarship where the member is posted to a new location and arranges for the child to be educated there;
- children's travel and reunion benefits;
- accommodation assistance for tertiary students living away from home; and
- reimbursement of certain textbook expenses for officer cadets at the Australian Defence Force Academy.

Chapter 8 also authorises assistance with emergency childcare, assistance for families to attend a Court of Inquiry or a coronial inquest, and assistance for family health costs.

Chapter 9 deals with matters relating to travel in Australia. The provisions set out benefits triggered when members and dependants travel at Commonwealth expense. These benefits include:

- compassionate travel;
- leave travel;
- travel for reunion purposes;
- payment of travel costs;
- vehicle allowance; and
- aircraft allowance for use of a private aircraft on duty.

Chapter 10 deals with clothing benefits. The provisions set out benefits for:

- the payment of uniform allowance;
- reimbursement of expenses for outfit instead of issue of uniform in certain cases;
- reimbursement for aide-de-camp, ADF advisor and Service police investigator clothing expenses; and
- compensation for loss of, or damage to, clothing or personal effects.

Chapter 11 deals with compensation and benefits on termination or death and the payment of financial entitlements:

- a bereavement payment on the death of a member; and
- funeral, floral and non-floral tribute costs.

Chapter 11 also includes additional military compensation provisions that apply in the event of a member's severe impairment or death in compensable circumstances related to service before 1 July 2004, the day on which the *Military Rehabilitation and Compensation Act 2004* commenced.

Chapters 12 to 17 inclusive deal with the overseas conditions of service applicable to members on short-term duty, long-term postings and deployments.

Chapter 12 deals with general matters relating to service of members overseas, including:

- the application of the Chapters on overseas conditions;
- the special meaning of words and phrases in relation to overseas conditions;
- the international time zones used in assessing rest periods to which members are eligible for during certain overseas travel; and
- the application of overseas conditions to members serving on a contract of employment with the United Nations or other multi-national force.

Chapter 13 covers travel benefits on short-term duty overseas, including class of travel, rest periods, payment of travel costs and purchase of necessary personal equipment. The Chapter also authorises special conditions for short-term duty such as participation in a Defence Cooperation Program or Project or on approved overseas activities.

Chapter 14 sets out travel, removal and related benefits for members and their dependants proceeding to and returning from a long-term posting overseas. These conditions of service include:

- pre-departure benefits;
- removal of household effects to and from the posting location;
- fares, class of travel and baggage arrangements for the journey; and
- meal costs during a period of settling-in or settling-out at the posting location.

Chapter 14 also includes conditions of service for situations in which members and dependants are evacuated from the posting location, or are withdrawn by the Commonwealth at short notice. Provision is made for payment to members where possessions are lost or damaged as a result of specified events (for example war or natural disaster).

Chapter 15 provides the conditions of service package for members living and working on a long-term posting overseas. These conditions include:

- overseas living allowances;
- various travel and vehicle benefits provided during the posting;
- residential accommodation and utilities, and the related contributions payable by members;
- other conditions related to living costs (such as summer schools for children);
- assistance with excess health costs;

- education assistance for children at the post and in Australia;
- club membership at certain locations without adequate sport and recreational facilities; and
- conditions relating to the death overseas of a member or dependant.

Chapter 16 provides certain additional benefits for members on long-term posting or extended short-term duty at hardship locations overseas. It covers:

- the hardship grading system;
- hardship allowance;
- accrual of additional recreation leave;
- assisted leave travel and related excess baggage benefits;
- reimbursement for extraordinary costs incurred during periods of disruption at posts; and
- special location allowances (currently payable to certain members on long-term posting in Afghanistan, Iraq and Papua New Guinea).

Chapter 17 provides the conditions of service for members deployed overseas on warlike and non-warlike service. The Chapter sets out the basis of eligibility for these conditions of service, and an overview of the benefits. It authorises:

- allowances payable for members on deployment;
- a civil practice support allowance for Reserve medical officers;
- additional recreation leave; and
- relief out-of-country travel fare assistance for deployments of six months or longer.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

Authority: Section 58B of the
Defence Act 1903

ADMINISTRATIVE NOTES FOR PRESERVING SYMMETRY OF NUMBERING WITH THE ADF PAY AND CONDITIONS MANUAL

Location	Topic	Description of administrative content in the Manual
Section 1.1.1	Introduction – overview	The aims of Chapter 1.
Chapter 2 Part 2 Division 3	On-line information – termination	On-line sources of information about the termination of ADF service.
Chapter 3 Part 1	Salaries	DFRT Determination No. 15 of 2008, <i>Salaries</i> , made under section 58H of the <i>Defence Act 1903</i> .
Chapter 3 Part 3	Salary packaging	Flexible remuneration packaging (salary packaging)
Chapter 3 Part 5 Division 1	Military Superannuation and Benefits Scheme retention benefit – overview	The main features of the Military Superannuation and Benefits Scheme retention benefit authorised under Part 8 of the <i>Military Superannuation and Benefits Act 1991</i> .
Annex 3.5.A	Eligible members – employment categories	Eligible members and employment categories for payment of the Military Superannuation and Benefits Scheme retention benefit authorised under Part 8 of the <i>Military Superannuation and Benefits Act 1991</i> .
Chapter 4 Part 2	ADF allowances	DFRT Determination No. 11 of 2003, <i>ADF Allowances</i> .
Chapter 4 Part 3	Qualification and occupation-based allowances	Various DFRT Determinations authorising qualification and occupation-based allowances.
Chapter 8 Part 1	Categories of member – dependants	The three categories in which ADF members are placed in relation to their dependants. The categories are: member with dependants, member with dependants (separated), and member without dependants.
Chapter 8 Part 2	Summary of conditions assisting dependants	Conditions of service assisting dependants of ADF members within Australia.
Chapter 11 Part 1	Rehabilitation and compensation for personal injury or disease – general arrangements	The scheme for rehabilitation and compensation of ADF members for personal injury or disease.
Chapter 12 Part 2	Advice and administration for overseas conditions of service	Sources of advice and information about overseas conditions of service.
Chapter 17 Part 5	Warlike and non-warlike deployments	This Part includes a range of benefits applicable to members on a deployment.
Chapter 17 Part 6	Third-country deployments	The range of benefits applicable to ADF members on deployment with the armed forces of another country.

Statement of Compatibility with Human Rights

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

Defence Determination 2016/19, Conditions of service

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 the Determination

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

This Determination implements a new Principal Determination which sets out the conditions of service for members of the Australian Defence Force. The conditions of service package contained in this Determination is nearly identical to that set out in the former Principal Determination which has been repealed by clause 1 of Schedule 1 of this Determination.

The new Principal Determination is intended to be policy neutral; however, some structural and policy changes have been made between the new Principal Determination and the former Principal Determination. These changes include the following.

- The internal structure of the Chapters has been revised to renumber Parts, Divisions and sections to remove all alphabetical numbering.
- The term 'clause' has been replaced by 'section' to better reflect best practice legislative drafting standards.
- Where relevant, the term 'entitlement' (and its derivatives) has been replaced by the terms 'benefit' or 'eligibility' dependent on the use of the term in the policy. This change is to ensure that some benefits in this new Principal Determination are available to members who meet eligibility conditions, rather than vested as entitlements for all members.
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- A provision has been included under Chapter 1 Part 2 section 1.2.5 which allows the Assistant Secretary People Policy and Employment Conditions to approve forms that are to be used by applicants for benefits under this Determination. Some forms are included in the new Principal Determination for the convenience of the reader, subsection 1.2.5.2 makes it clear that these forms are approved for the purposes of subsection 1.2.5.1 of this Determination.

This new Principal Determination maintains the conditions of service set out in the former Principal Determination. While some of those conditions may limit a member's human rights, for example requiring a member to live in a certain location, these limitations are reasonable and proportionate as a part of the requirements of serving in the Australian Defence Force.

This Determination also provides a scheme of transitional and savings provisions that will preserve a member's accrued rights and liabilities. This Determination maintains the following:

- A member's entitlements, benefits and liabilities under the former Principal Determination.
- The authority and status of decisions made by persons whom the Chief of the Defence Force (CDF) authorised to exercise similar powers for and on behalf of the CDF in relation to discretions under the former Principal Determination.
- That a person is taken to comply with eligibility conditions under the new Principal Determination if the person complied with the eligibility conditions for a corresponding benefit or liability under the former Principal Determination.

Conclusion

This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Tyson Paul Sara, Assistant Secretary People Policy and Employment Conditions