

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination (No. 5) 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 salary advancement provisions within the Officer Aviation Pay Structure to ensure salary advancement for Combat Pilot – Troop Commanders occurs on appointment to Troop Command.
- Include Naples, Italy; and Hwacheon-gun and Inje-gun, South Korea as hardship locations to ensure members who are deployed or on short-term duty to any of these locations have access to the overseas hardship package of benefits. Locations are considered hardship locations based on information provided by Defence's contracted service provider.
- Make a range of miscellaneous amendments that:
  - Clarify that transition absence days can be taken as either a full day or a half day.
  - Clarify that when a member is provided a storage benefit in Australia in connection with an overseas posting, that despite having their items moved from storage to their housing benefit location on return from overseas, the two removals count as one removal.
  - Substitute reference to "Maritime disability allowance" with "Maritime deployable support element allowance" as a consequence of the introduction of the Military Factor Framework.
  - Correct typographical errors and promote consistency and the use of contemporary drafting styles within the Principal Determination to improve readability; and
  - Insert a range of directly conferred decision makers into 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, consultation was undertaken with Remuneration Operations, Military Personnel Branch, Army Aviation Workforce Management, People System & Payroll Services, Defence Finance Group and the Directorate of Relocations and Housing.

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. 5) 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 5 of the Determination commences on 8 May 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—Army OAPS amendments***

Item 1 amends sections 3.2.47H of the Principal Determination which provides the Officer Aviation increment for a member who is placed in the Generalist Pathway and the Rotary Wing Pilot competency stream of the Office Aviation Pay Structure. Paragraph 3.2.47H.11.a has been amended to ensure the additional work value of Troop Commander is recognised upon appointment with a plus one increment for members at a minimum rank of Captain (Year 4).

Item 2 to 4 amend Section 3.2.47J of the Principal Determination which provides Entry placement in the Officer Aviation Pay Structure for Army Aviation Officers who are in the Specialist pathway with a previous command appointment. The following paragraphs have been amended to substitute “anniversary” with “promotion anniversary” to clarify that it is referring to the anniversary that occurs every 12 months after the member's most recent promotion date.

#### ***Schedule 2—Hardship location amendments***

Items 1 to 3 amend Annex 16.B of the Principal Determination which provides locations that are hardship locations for the purpose of overseas conditions of service. The Annex has been amended to do the following.

- Insert Naples, Italy; and Hwacheon-gun and Inje-gun, South Korea as hardship locations to ensure that members who are deployed or on short-term duty to any of the locations have access to the overseas hardship package of benefits.
- Renumber the table items to correct the cities and be listed in alphabetical order.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

#### ***Schedule 3—Miscellaneous amendments***

Item 1 inserts the definition of ‘Toll decision maker’ into section 1.3.1 of the Principal Determination which provides definitions that apply to the Principal Determination. Section 11A of the AI Act provides that the definitions are inserted in their appropriate alphabetical positions, determined on a letter-by-letter basis. The addition of this definition is to allow a number of new positions within TOLL Transitions to make decisions on housing and removal related benefits. The positions listed are a consequence of structural change within TOLL Transitions and are in addition to those the CDF has already authorised to make decisions on their behalf.

Items 2, 7 to 9, 11 to 32, 34, 36 to 44, 49 and 50 make a range of technical amendments to various provisions within the Principal Determination to insert reference to “a Toll decision maker”, allowing the listed decision makers to make decisions on the benefits provided by the provision in addition to those already authorised by the CDF. The changes made by these provision are as a consequence of the change made by item 1 of this Schedule.

Item 3 amends section 2.2.8 of the Principal Determination which provides that a member is eligible for 25 transition absence days to attend a range of activities associated with leaving the Permanent Forces. Subsection 2.2.8.4 has been amended to clarify that a member can take a transition absence for a full day or a half day.

Item 4 amends section 4.4.33 of the Principal Determination which provides that when a member is eligible for both Antarctic allowance and Maritime disability allowance for the same period, only the higher of the two allowances is payable. The section has been amended to update the reference to “Maritime disability allowance” with “Maritime disability support element allowance” as a consequence of the introduction of the Military Factor Framework.

Item 5 repeals and substitutes section 6.1.10 of the Principal Determination which provides that when a member is provided a storage benefit in Australia in connection with and overseas posting and then on return from overseas has their items removed to their housing benefit location, this only counts as one removal. The section has been redrafted to provide clarity to the reader and promote the use of contemporary drafting styles.

Items 6 and 33, 45 and 46 amend various provisions within the Principal Determination to correct typographical errors.

Item 10 amends section 6.5.6 of the Principal Determination which provides how storage benefits are provided when a member’s partner is also their resident family. Paragraph 6.5.6.a has been amended to clarify that if both members are eligible for a removal to the same housing benefit location, only one member is eligible for the removal.

Item 35 amends the heading to section 7.5.12 of the Principal Determination to remove reference to CDF as a consequence of the changes made by item 36 of this Schedule.

Item 47 and 48 amends section 7.8.5AA of the Principal Determination which provides early eligibility for the rent allowance trial. The section has been amended to update reference to “CDF” with “decision maker” and to include a definition of decision maker for the purpose of the section.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

#### *Schedule 4—Transitional Provisions*

Clause 1 defines the Defence Determination for this Schedule as the Defence Determination 2016/19, Conditions of service, as in force from time to time.

Clause 2 provides that a member who was deployed to Italy between 13 October 2023 and the commencement of this Determination is eligible for any benefits that they would have been eligible for had the changes made by item 1 of Schedule 2 of this Determination had applied at the time.

Clause 3 provides that a member who was on short-term duty to Hwacheon-gun, South Korea or Inje-gun, South Korea between 6 September 2024 and the commencement of this Determination is eligible for any benefits that they would have been eligible for had the changes made by item 3 of Schedule 2 of this Determination had applied at the time.

**Defence Determination, Conditions of service Amendment Determination (No. 5) 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 salary advancement provisions within the Officer Aviation Pay Structure to ensure salary advancement for Combat Pilot – Troop Commanders occurs on appointment to Troop Command.
- Include Naples, Italy; and Hwacheon-gun and Inje-gun, South Korea as hardship locations to ensure members who are deployed or on short-term duty to any of these locations have access to the overseas hardship package of benefits. Locations are considered hardship locations based on information provided by Defence's contracted service provider.
- Make a range of miscellaneous amendments that:
  - Clarify that transition absence days can be taken as either a full day or a half day.
  - Clarify that when a member is provided a storage benefit in Australia in connection with an overseas posting, that despite having their items moved from storage to their housing benefit location on return from overseas, the two removals count as one removal.
  - Substitute reference to "Maritime disability allowance" with "Maritime deployable support element allowance" as a consequence of the introduction of the Military Factor Framework.
  - Correct typographical errors and promote consistency and the use of contemporary drafting styles within the Principal Determination to improve readability; and
  - Insert a range of directly conferred decision makers into 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.

*Right to an adequate standard of living*

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

**Assessment of compatibility**

This Determination is compatible with human rights as it promotes a member's right to the enjoyment of just and favourable work conditions and to an adequate standard of living by:

- Recognising the additional work value of Troop Commanders by providing them with an additional salary increment upon appointment to Troop Command.
- Ensuring members who are posted to locations where they may experience difficulties or hardships have access to the overseas hardship package of benefits as a part of their conditions of service.
- Providing members who are leaving the Permanent Force with the flexibility to take their transition absence days as either full days or half days.

This Determination also makes a number of technical amendments which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

## **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*.