

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Continuation bonus) Determination (No. 9) 2025

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination) and Defence Determination, Conditions of service Amendment (Continuation bonus) Determination (No. 2) 2025 (the amending Determination), both 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 update continuation bonus provisions to better clarify the definition of effective service, and clarify how it is used in relation to the application rules for continuation bonus 1 and 2. Effective service in these instances includes periods of service in the Reserves undertaken on a continuous full-time service basis immediately before the member joined the Permanent Forces.

The Determination also amends the savings provision in *Defence Determination, Conditions of service Amendment (Continuation bonus) Determination (No. 2) 2025* (amending Determination) to ensure that members who are made an offer for the continuation bonus under the continuation bonus pilot are able to accept the offer until the end of 2025.

Operational details

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, and the savings provisions in the amending 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 Military Personnel 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 (Continuation Bonus) Determination
(No. 9) 2025***

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 5 June 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—Continuation bonus amendments

Item 1 amends subparagraphs 3.4.3.1.a.i and 3.4.3.1.b.i of the Principal Determination which provide the commencement day of an agreed period of service for continuation bonus 1 and continuation bonus 2, respectively. The amendment removes the notes in each subparagraph as a consequence of changes made by items 4 and 5 of this Determination.

Item 2 amends paragraph 3.4.3.1.a of the Principal Determination which provides circumstances in which the agreed period of service will commence in relation to continuation bonus 1. The item repeals subparagraph 3.4.3.1.a.ii, which refers to service obligations imposed when the member first joined the Permanent Forces. This requirement is now captured, albeit more broadly, by amendments made by item 3 of this Determination.

Item 3 amends paragraph 3.4.3.1.c of the Principal Determination which provides some of the circumstances in which an agreed period of service will commence. The item redrafts the paragraph to include the completion of a service obligation. This amendment means that a member must have completed all service obligations (as defined in section 3.4.2 of the Principal Determination) before they commence their agreed period of service.

Items 4 and 5 repeal and substitute sections 3.4.6 and 3.4.7 of the Principal Determination which define effective service. The amendments remake the definition by making general rules about when service may be effective service and how effective service is calculated on days that a member is, and is not, subject to a flexible service determination made under section 23 of the Defence Act.

Items 6 and 7 repeal and substitute section 3.4.8 and 3.4.13 which provides when Divisions 1 and 3, respectively, apply to members. The amendments made require the periods of effective service to be continuous periods and provide that the continuity of that period of effective service is not broken by a period of leave without pay. A member would break a period of continue effective service if they were a member of the Reserves undertaking continuous full-time service and had a break in full-time service before joining the Permanent Forces.

Item 8 amends section 3.4.23 of the Principal Determination which provides the rules to recover the continuation bonus in certain circumstances. The amendment removes the requirement that a bonus can only be recovered if the member has made a valid acceptance of an offer. Subsection 3.4.20.1.b of the Principal Determination enables a member to be eligible to be paid the bonus in limited circumstances without making a valid acceptance of an offer.

Schedule 2—Continuation bonus pilot amendments

Item 1 amends clause 2 of Schedule 2 of the amending Determination which provides the saving provisions relating to the continuation bonus pilot. The amendment excludes subsection 3.4.11.2 from the savings provisions. This has the effect of enabling members to accept an offer of a continuation bonus under the pilot scheme if they were offered a bonus on or before 30 June 2025.

***Defence Determination, Conditions of service Amendment (Continuation Bonus) Determination
(No. 9) 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 update continuation bonus provisions to better clarify the definition of effective service, and clarify how it is used in relation to the application rules for continuation bonus 1 and 2. Effective service in these instances includes periods of service in the Reserves undertaken on a continuous full-time service basis immediately before the member joined the Permanent Forces.

The Determination also amends the savings provision in the amending Determination to ensure that members who are made an offer for the continuation bonus under the continuation bonus pilot are able to accept the offer until the end of 2025.

Assessment of compatibility

This Determination provides technical amendments to provide clarity and greater certainty over the application of the continuation bonus, which provides members with a payment for agreeing to undertake additional periods of service in the Permanent Forces. As such, it does 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*.