

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Cyber warfare pay structure) Determination (No. 12) 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 provide administrative rules for the new cyber warfare pay structure that was introduced into the DFRT Determination No. 2 of 2017, *Salaries* (the Salaries Determination), by DFRT Determination No. 7 of 2025, *Salaries – Cyber warfare pay structure – amendment* (the amending determination). The Salaries Determination, as amended, permits the Principal Determination to make rules for these matters and deals with increment placement on entry into the new pay structure, increment advancement, pathway transfer and the deferral of increment advancement.

Operational details

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

Incorporation by reference

The Determination makes references to sections of the *Defence Determination 2016/19, Conditions of service*. This Instrument is incorporated into this Determination as in force from time to time.

For the purpose of adopting Defence Force Remuneration Tribunal (DFRT) determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act.

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 the Navy, Army, Air Force, Military Personnel Branch Industrial Relations and the Cyber Workforce Manager.

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

Approved by:

BRIG Kirk Lloyd
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 the following commencement dates:

- Sections 1 to 4 of the Determination commences on the day the instrument is registered.
- Schedule 1 and 2 of the Determination commence on the later of the following days:
 - the day the amending determination commences.
 - the day this Determination is registered.

However, if the amending Determination does not commence within 12 months beginning on the date of signature of this Determination, schedules 1 and 2 of this Determination do not commence at all.

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—Cyber warfare pay structure amendments

Item 1 amends section 3.2.29 of the Principal Determination which identifies which members Division 3 of Part 2 of Chapter 3 does not apply to. The amendment provides that a member eligible under Divisions 4, 4A, 4B, or 4C is not eligible under Division 3. The amendment removes a reference to a member being paid salary under the mentioned Divisions as it is not their function.

Item 2 inserts a new Division 4C into Part 2 of Chapter 3 of the Principal Determination. This new Division provides administrative rules dealing with increment placement, promotion and appointment, transferring to a different pathway and increment advancement for the cyber warfare pay structure. Once a cyber warfare member is in a pathway under the Salaries Determination, the new Division will apply to them. Specifically, the new Division provides the following:

Subdivision 1: General provisions

- Section 3.2.47AB provides the purpose of the Division, which is to provide for increment placement and advancement, as well as transfer, promotion and deferral, for members in the cyber warfare pay structure.
- Section 3.2.47AC provides defined terms used within the Division. The 'cyber warfare pay structure' is defined by this section as meaning the structure provided in Salaries Determination, which also provides the definitions for the 'cyber warfare member', 'cyber warfare officer' and 'cyber warfare specialist'. The section also identifies the decision makers for this Division.
- Section 3.2.47AD provides the definition for 'anniversary date'. Specifically, the section provides what dates may be considered a member's anniversary date, as well as allowing for the extension of the anniversary date when member is not entitled to salary.
- Section 3.2.47AE provides that the Division applies to a member who is a cyber warfare member.

Subdivision 2: Increment on entry to the cyber warfare pay structure

- Section 3.2.47AF provides the entry placement for the pay structure generally. Specifically, the section provides that a member joining the pay structure will be paid at the minimum increment for their rank and pathway. This reflects the general rule provided in the Salaries Determination.

- Section 3.2.47AG provides the entry placement for members joining the cyber warfare pay structure from another pay structure. The section provides that a cyber warfare member is paid at the increment for their rank and pathway that has a salary that is equal to, or the next higher increment, to their current salary. However, if the member's current salary is less than the lowest increment, consistent with the Salaries Determination, they are paid at the lowest increment for their rank and pathway.
- Section 3.2.47AH provides a discretionary power for the Subdivision. The section allows a decision maker to place a member on a higher increment on entry into the pay structure between the minimum and maximum for their rank and pathway, if the higher increment is justified based on considerations provided in subsection 2. These considerations reflect the cyber warfare pay structure management principles that were provided to the DFRT.

Subdivision 3: Increment on transfer between pathways within the cyber warfare pay structure

- Section 3.2.47AI provides an increment change when a cyber warfare member transfers between pathways within the cyber warfare pay structure. The member will be paid at the lowest increment for their rank at the gaining pathway. This reflects the general rule provided in the Salaries Determination. If the member's increment is above the minimum increment, the member will continue at their increment. A decision maker can decide to place the member at a higher increment, if the higher increment is justified based on considerations provided in subsection 4.

Subdivision 4: Increment on promotion within the cyber warfare pay structure

- Section 3.2.47AJ provides the increment on promotion for officers. The section provides that an officer will receive the lowest increment available to their new rank on promotion. This reflects the general rule provided in the Salaries Determination.
- Section 3.2.47AK provides the increment on promotion for a member at other ranks. Specifically, the section provides a single increment increase on promotion for most ranks. For specified ranks, the member's increment will increase by two increments. If their new increment is below the minimum for their rank, the member receives the minimum increment, which reflects the general rule provided in the Salaries Determination. Despite the above, a member cannot be placed at an increment above the highest increment available for their rank and pathway.
- Section 3.2.47AL provides an increment change when an other ranks member is appointed as an officer. Upon appointment as an officer, either the member will get the minimum increment for their rank and pathway, or they will maintain the increment they held before appointment if it is higher.
- Section 3.2.47AM provides a discretionary power for the Subdivision. The section allows a decision maker to place a member on a higher increment on promotion between the minimum and maximum for their rank and pathway, if the higher increment is justified based on considerations provided in subsection 2. These considerations reflect the cyber warfare pay structure management principles that were provided to the DFRT.

Subdivision 5: Increment advancement and completion of years in rank

- Section 3.2.47AN provides that a member placed at an increment under section 3.2.47AG when they enter the pay structure will not advance in increment until the date the decision maker specified when the member entered the pay structure. The decision maker must have regard to the principles set out for the management of the pay structure when setting the date.
- Section 3.2.47AO defines when a member has completed a year in rank. This section requires a member to complete 12 months of service in the Permanent Forces or 20 days of Reserve service. If the member has served in the Reserves and Permanent Forces in the 12 month period, the member is required to complete a total of 20 days of service in the 12 month period. To complete a year in rank, the member must have also been assessed as having carried out their duties and responsibility at the standard expected for their rank and pathway.
- Section 3.2.47AP provides for the deferral of the completion of a year in rank when the member does not carry out their duties and responsibility at the standard expected for their rank and

pathway. The section provides for the review mechanism of the members performance. If a member subsequently is assessed as carrying out their duties and responsibility at the standard expected for their rank and pathway, the deferral period will end and the member will have completed a year in a rank under section 3.2.47AO.

Schedule 2—Transitional provision

Clause 1 defines 'Salary Determination' for the purpose of this Schedule as meaning DFRT Determination 2017/2, *Salaries*, as in force from time to time.

Clause 2 provides a member who would have transferred to the new cyber warfare pay structure on or after 3 July 2025 with a payment. The amount of the payment is the difference between the amount they were paid between 3 July 2025 and the commencement of this Determination and the amount they would have been paid had the amending Determination commenced on 3 July 2025. The member is only eligible for this amount on days that they would have been in the cyber warfare pay structure. This ensures that members are not financially disadvantaged by the cyber warfare pay structure not commencing on 3 July 2025.

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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 provide administrative rules for the new cyber warfare pay structure that was introduced into the DFRT Determination No. 2 of 2017, *Salaries* (the Salaries Determination), by DFRT Determination No. 7 of 2025, *Salaries – Cyber warfare pay structure – amendment* (the amending determination). The Salaries Determination, as amended, permits the Principal Determination to make rules for these matters and deals with increment placement on entry into the new pay structure, increment advancement, pathway transfer and the deferral of increment advancement.

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 promotes a members right to the enjoyment of just and favourable conditions of work by providing cyber warfare members with tailored remuneration for their skillset. The rules ensure that members are remunerated fairly for their qualifications and skills, and providing equal opportunity for growth across the Services.

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*.