EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination (No. 1) 2026

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 sunsetting 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:

- Provide that a member posted to a seagoing submarine does not have to pay casual meal charges to eat in a mess when they are not provided with a meal by the submarine's galley.
- Expand close relative travel benefits to include travel when a member dies while on short-term duty overseas.
- Update terminology in line with recent amendments to the Defence Regulation 2016 and to ensure consistency with terminology used around the end of a member's service.
- Expand the application of the provision relating to the repayment of salary and DFRT allowances that were forfeited due to the member being imprisoned or detained.
- Amend the definition of transition period, as it relates to senior officers who are transitioning from the ADF, by removing the position titles and replacing them with the relevant action of posting the member of a pool position.
- Clarify that the removal of furniture and effects for a member who is posted to RAAF Base Tindal for 6 months or more is to an approved store, and is in addition to benefits furniture and effects removed under provision 6.5.26.
- Provide clarity about when a member is not eligible for housing assistance if they own a suitable own home that they have leased to Defence Housing Australia.
- Clarify that a member who receives a removal benefit when they cease to have any resident family or recognised other person is still eligible for a removal when they cease continuous full-time service.
- Make a range of technical amendments, including typographical errors, which provide clarity and improve readability within the Principal Determination.

Operational details

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

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Incorporation by reference

The Determination makes references to sections of the *Defence Act 1903*, *Defence Force Discipline Act 1982*, and 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:

- Schedule 1: Navy Service Conditions – Military Personnel Branch.
- Schedule 2: Defence Member and Family Support and Military Personnel Branch – Service Conditions, Australian Submarine Agency and Australian Signals Directorate.
- Schedules 3 and 5: The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.
- Schedule 4: Directorate of Housing and Relocations, Directorate of Personnel Policy Operations, Office of the Inspector-General of the Australian Defence Force, Defence Housing Australia and Toll Transitions.

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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Annex A

Defence Determination, Conditions of service Amendment Determination (No. 1) 2026

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 commence on 12 February 2026.

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—Members posted to seagoing submarines amendments

Item 1 amends section 7.4.38 of the Principal Determination, which provides the basis for benefits provided to members who are posted to seagoing vessels and Nushipsֿ. Paragraph 7.4.38.c has been amended to remove reference to 'submarine's', as Division 6 Part 4 Chapter 7 does not apply to member's who are posted to seagoing submarines.

Item 2 amends subsection 7.9.5.2 of the Principal Determination, which provides when a member does not pay the casual meal charge. Subparagraph 7.9.5.2.f has been inserted to provide that if a member posted to a seagoing submarine is not provided with a meal by the submarine's galley, the member does not have to pay the casual meal charge for a meal provided in a mess.

Item 3 amend paragraph 7.9.5.2A.c of the Principal Determination, which provides when a member posted to a seagoing submarine must pay the casual meal charge if they eat in a mess. A new subparagraph 7.9.5.2A.c.iii has been inserted to clarify that if meals that are ordinarily provided by the submarine's galley are available, the member must pay the casual meal charge if they eat in the mess.

Schedule 2—Travel after death overseas amendments

Items 1 and 2 amend section 1.3.2 of the Principal Determination, which provides the definition of 'close relative' for the Principal Determination. The amendments create a distinction between the definition 'close relative" when used to provide benefits to a member, and providing member to the close relative. The amendment ensure benefits provided to a close relative remain within the scope of Part IIIA of the Defence Act.

Item 3 inserts a new paragraph into section 12.7.3 of the Principal Determination, which identifies who the Part applies to. The amendment enables a member's close relative to receive benefits under the section, which is necessary for the new section inserted at item 4 of this Schedule.

Item 4 inserts section 12.7.5A into Part 7 of Chapter 12 of the Principal Determination, which provides a travel benefit when a member or their dependant dies while posted overseas. The new section provides a close relative with return travel to the location to attend a funeral or to make necessary arrangements following the persons' death. The section remakes section 15.3.34, and expands the benefit to members who die while on short-term duty overseas.

Item 5 repeals section 15.3.34 of the Principal Determination, which provides a close relative a travel benefits for when a member or their dependant dies while on a long-term overseas posting. The section is being repealed as the benefit is being provided under the section inserted by item 4 of this Schedule.

Schedule 3—Defence Regulation consequential amendments

The amendments in this Schedule are the result of amendments being made to Defence Regulation 2016 by Defence Amendment (RCDVS Implementation) Regulations 2025, which commenced on 13 December 2025. In these amendments, the terminology is changed from 'termination of service' to 'end of service'.

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Items 1 and 2 amend section 1.3.1 of the Principal Determination, which provides the definitions applicable to the Principal Determination. The amendments do the following.

- Item 1 amends the definition of 'ceasing continuous full-time service' to ensure that all ways in which a member can cease continuous full-time service. The amendment includes the former definition of 'involuntary separation', which is being removed by item 2 of this Determination.

- Item 2 omits the definition of 'involuntary separation'. This definition is being omitted as the term was not being used consistently or with a consistent meaning, and is no longer needed.

Items 3, 10 and 11 amend various provisions of the Principal Determination. The items replace the terminology of 'termination' with 'end of service'.

Item 4 amends section 2.2.5 of the Principal Determination, which provides benefits available to members who apply for career transition training. The item amends the note under subsection 1A to update the terminology.

Item 5 amends section 3.2.5 of the Principal Determination, which provides the timing for the payment of salaries. The item amends paragraph a. and repeals paragraph b, to provide the update the terminology and remove the differentiation between officers and Warrant Officer Class 1 and other ranks.

Item 6 amends section 3.3.10 of the Principal Determination, which identifies members who are not eligible for bonuses under Chapter 3 Part 3. The item amends paragraph d to remove the reference to 'involuntary separation' to replace it with the terminology used in the Defence Act and the Defence Regulation.

Items 7 and 8 amend sections 3.3.21 and 3.3.22 of the Principal Determination, which make provisions relating to the cessation of eligibility for, and the repayment of, a capability bonus. Item 7 amends paragraph 3.3.21.1.e, and item 8 amends paragraph 3.3.22.1.e, to update the terminology and include the behaviour of sexual violence under section 24(1)(d) of the Defence Regulation.

Item 9 amends section 3.4.23 of the Principal Determination, which provides when a member is required to repay a continuation bonus. The item inserts a new subparagraph to include the behaviour of sexual violence under section 24(1)(d) of the Defence Regulation.

Items 12 and 13 amend various provisions of the Principal Determination. The items remove references to 'involuntary separation' and update the terminology around the end of service.

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

Schedule 4—Miscellaneous amendments

Items 1, 2, 7, and 11 amend various sections within the Principal Determination to correct typographical or grammatical errors. These changes are technical in nature and do not alter the underlying policies, or the benefits which are currently provided.

Item 3 amends paragraph 1.3.16.1.c of the Principal Determination, which provides the conditions, which the CDF must be satisfied the member's partner meets for them to be considered the member's accompanied resident family. The paragraph has been amended to include reference to the decision maker, which is defined in subsection 1.3.16.2.

Item 4 repeals section 1.3.43 of the Principal Determination, which provides the definition of specific words for determinations made under section 58H of the Defence Act. The definition is repealed as determinations made under section 58H now refer to the definitions used in the Principal Determination.

Items 5 and 6 amend section 1.7.7 of the Principal Determination, which provides the circumstances in which a member is repaid salary and allowances that were forfeited under section 1.7.5 of the Principal Determination. The item repeals and substitutes subsection 1.7.7.1 to extend repayment to a member who meets any of the following:

- The charge laid against them has been withdrawn, discontinued or dismissed.

- They have been acquitted of the charge laid against them.

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Item 8 repeals and substitutes the definition of 'transition period' under section 5.1.1A of the Principal Determination. The position titles have been removed from the definition, replacing them with posting the member of a pool position before they cease to be a member of the Defence Force. This amendment is consequential to changes made to the definition of senior officer who transitioned made by *Defence Determination, Conditions of service Amendment (Employment offer modernisation) Determination 2023 (No. 2)*, which removed the position titles from the definition.

Item 9 repeals and substitutes subsection 6.5.37A.2 of the Principal Determination, which provides a member's eligibility for a removal of furniture and effects when they are posted to RAAF Tindal. The subsection has been redrafted for the following reasons.

- To provide clarity that the removal is to an approved store if the member's furniture and effects have not been removed under section 6.5.26.

- To add a note that advises that storage benefits the member may be eligible for are provided under section 6.5.54A.

Item 10 amends subsection 6.5.75.3 of the Principal Determination, which provides the removal and storage benefits for a member who ceases to have resident family or recognised other persons. A note has been added at the end of the subsection that advises that the member who receives this benefit may be still eligible for a removal when they cease continuous full-time service.

Item 12 repeals and substitutes section 7.2.18 of the Principal Determination, which specifies that a member with suitable own home that is subject to a commercial lease is not eligible for housing assistance. The section has been amended to include suitable own homes that are leased to Defence Housing Australia.

Item 13 amends section 7.11.1 of the Principal Determination, which provides the simplified outline of Part 11 Evacuation assistance. The section has been amended to remove information that is not required. The change is technical in nature and does not alter the underlying policies, or the benefits, which are currently provided.

Items 14 to 19 amend various provisions of the Principal Determination to correct cross-references, numbering and typographical errors. These changes are technical in nature and do not alter the underlying policies, or the benefits which are currently provided.

Schedule 5—Transitional Provisions

Item 1 amends the heading of Division 2 of Part 2 of Chapter 1 of the Principal Determination, which provides the savings provisions applicable to amendments made to the Defence Determination. The amendment retitles the Division to allow for the inclusion of application and enduring transitional provisions, which have started to be included in the Division when required.

Item 2 inserts a new Subdivision 6 into Division 2 of Part 2 of Chapter 1of the Principal Determination. The new subdivision provides transitional provisions to do the following.

- Section 1.2.14 defines the 'amending determination' for this Subdivision as this determination. The section also defines the 'amending Regulation' as Defence Amendment (RCDVS Implementation) Regulations 2025, which commenced on 13 December 2025.

- Section 1.2.15 provides transitional arrangements for the end of service amendments made by Schedule 1 of this Determination. The section provides that the changes made in Schedule 3 do not affect end of service decisions or benefits provided to members who were terminated prior to the changes.

- Section 1.2.16 provides an application provision. The rules in item 12 of schedule 4 only apply to a member if they had a suitable own home that was leased to DHA immediately before the commencement of this Determination and they were receiving a type of housing assistance. If the rule applies to the member, the amendment only applies to them once the lease of the suitable own home ends or the home stops being a suitable own home.

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Annex B

Defence Determination, Conditions of service Amendment Determination (No. 1) 2026

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:

- Provide that a member posted to a seagoing submarine does not have to pay casual meal charges to eat in a mess when they are not provided with a meal by the submarines galley.
- Expand close relative travel benefits to include travel when a member dies while on short-term duty overseas.
- Update terminology in line with recent amendments to the Defence Regulation 2016 and to ensure consistency with terminology used around the end of a member's service.
- Expand the application of the provision relating to the repayment of salary and DFRT allowances that were forfeited due to the member being imprisoned or detained.
- Amend the definition of transition period, as it relates to senior officers who are transitioning from the ADF, by removing the position titles and replacing them with the relevant action of posting the member of a pool position.
- Clarify that the removal of furniture and effects for a member who is posted to RAAF Base Tindal for 6 months or more is to an approved store, and is in addition to benefits furniture and effects removed under provision 6.5.26.
- Provide clarity about when a member is not eligible for housing assistance if they own a suitable own home that they have leased to Defence Housing Australia.
- Clarify that a member who receives a removal benefit when they cease to have any resident family or recognised other person is still eligible for a removal when they cease continuous full-time service.
- Make a range of technical amendments, including typographical errors, which provide clarity and improve readability within 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.

Assessment of compatibility

Schedule 2 is compatible with human rights by providing additional benefits to members and their dependants as a part of the member's conditions of service package in circumstances when the member or their dependant dies in an overseas location.

Items 5 and 6 of Schedule 4 is compatible with human rights as it promotes the member's right to the enjoyment of just and favourable conditions of work by ensuring that the part of their salary and DFRT allowances that were forfeited because of detention or imprisonment is repaid if there has been no finding of guilt.

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Item 12 of Schedule 4 is compatible with human rights as, despite limiting when a member can access a form of housing assistance, it does not prevent the member from receiving housing assistance when they do not own a suitable own home in their housing benefit location.

Schedules 1, 3, the remainder of Schedule 4, and Schedule 5 make amendments to the Principal Determination, which do not change the underlying policies or benefits. 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*.

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