Defence Determination 2014/51, Deliberately differentiated offer for members

I, CHRISTON SCOTT CHAMLEY, Acting Director General People Policy and Employment Conditions, make this Determination under section 58B of the Defence Act 1903.

Dated 9 October 2014

Acting Director General
People Policy and Employment Conditions
Defence People Group
1 Citation

1. This Determination is Defence Determination 2014/51, Deliberately differentiated offer for members.

2. This Determination may also be cited as Defence Determination 2014/51.

2 Commencement

This Determination commences on the date of signature.

3 Amendment

Defence Determination 2005/15, Conditions of Service, as amended,¹ is amended as set out in this Determination.

4 Clause 3.0.2 (Contents)

after Part 5, insert

Part 5A Deliberately differentiated offer for members

5 Chapter 3 Part 5 (Retention and completion benefits)

after the Part, insert the Part in Schedule 1

6 Chapter 3 Part 5A (Deliberately differentiated offer for members)

after Part 5A, insert the Annex in Schedule 2

NOTE

1. Defence Determination 2005/15, as amended to date. For previous amendments see Note to Defence Determination 2014/1 and amendments made by Defence Determinations 2014/1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49 and 50.
Part 5A: Deliberately differentiated offer for members

3.5A.1 Overview

1. This Part has the following purposes.
   a. To facilitate the following outcomes.
      i. The member who is critical to capability is retained.
      ii. A position critical to capability is no longer at risk.
      iii. The Defence factors that influenced the member to consider leaving the ADF are weakened.
      iv. A succession plan to address the workforce capability gap is implemented.
      v. A critical workforce capability gap is resolved.
   b. To provide a selection of incentives that may be used to retain a member.

2. The deliberately differentiated offer is a management-initiated retention measure. Members may not apply for a deliberately differentiated offer.

3. This Part is not intended to be used as a talent or career management tool. It should not be used to address issues of equity and flexible work arrangements as targeted special measures are already available for these issues.

3.5A.2 Definitions

For the purpose of this Part, the following definitions apply.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition in this Part</th>
</tr>
</thead>
<tbody>
<tr>
<td>member critical to capability</td>
<td>means a member for whom the CDF decides all the following circumstances exist. a. The loss of that member would significantly impact on ADF strategic or operational capability. b. The member's skills, knowledge or qualifications cannot be readily replaced in the immediate future. c. The member has demonstrated consistent high performance.</td>
</tr>
<tr>
<td>position critical to capability</td>
<td>means a position that is essential to strategic or operational capability of the ADF and requires a particular set of skills, knowledge or qualification. Failure to fill the position impacts negatively on delivery of Service capability.</td>
</tr>
<tr>
<td>agreed period of service</td>
<td>means the period the member has agreed to serve in the position for which the deliberately differentiated offer is made. It is notified to the member using the form at Annex 3.5A.A.</td>
</tr>
<tr>
<td>workforce capability gap</td>
<td>means the gap between the current and required capability of the workforce.</td>
</tr>
</tbody>
</table>
3.5A.3  Member this Part applies to
For this Part, the member must meet all of the following conditions.

a. The member is either of the following.
   i. A member of the Permanent Force.
   ii. A member of the Reserve Force on continuous full-time service.

b. The member is a member critical to capability.

See: Clause 3.5A.2, Definitions

3.5A.4  Situations that delay service
A member who is offered a deliberately differentiated offer under this Part cannot start their agreed period of service if any of the following circumstances apply to them.

Note: This means a member may accept an offer and benefits may start, but their agreed period of service only starts after they stop being in any of these situations.

a. The member is not on paid service.

Example: A member on leave without pay.

b. The member is subject to an undertaking for further service under Part 8 of the Military Superannuation and Benefits Act 1991 (as preserved by item 4 of Schedule 4 Defence Legislation Amendment Act (No. 1) 2005).

c. The member has any of the following liabilities.
   i. An initial minimum period of service under Defence (Personnel) Regulations 2002.

   Exception: An undertaking for further service associated with a promotion to a rank below Brigadier.


   iii. An undertaking for further service under Defence (Personnel) Regulations 2002. This includes members promoted to a senior officer rank.

See: Defence (Personnel) Regulations 2002

d. The member is on Reserve service.

Note: Reserve service does not include continuous full-time service.
3.5A.5 Considerations before an offer is made

1. Before deciding that a member is to be given a deliberately differentiated offer, the CDF must have regard to the following circumstances.
   a. Whether the member has applied, or is expected to apply, to transfer to the Reserve Force in their Service under the Defence (Personnel) Regulations 2002.
      See: Defence (Personnel) Regulations 2002, Chapter 8 Part 1 Division 2 (Voluntary transfer of members)
   b. Whether the member has applied, or is expected to apply, to voluntarily terminate their Service under the Defence (Personnel) Regulations 2002.
      See: Defence (Personnel) Regulations 2002, Chapter 9 Part 3 (Voluntary termination of service)
   c. Whether the member has undertaken, or is expected to undertake, a further period of continuous full-time service in the position.
   d. Whether the member has indicated that they are unwilling to remain in or move to a position critical to capability.

2. Before deciding which benefits in this Part to include in the deliberately differentiated offer made to the member, the CDF must consider the following matters, if relevant.
   a. Any evidence that failure to retain the member will cause a workforce capability gap.
   b. The manner in which the current and future duties of the member support capability.
   c. Whether the member holds skills, knowledge or qualifications that are essential to the delivery of Service capability.
   d. The required period of service to assist succession in the position.
   e. The anticipated timeframe to backfill the position if the member were to leave the Permanent Force or resign from the ADF.
   f. The potential for the succession plan developed by the Service career management agency to address the position critical to capability or workforce capability gap within the agreed period of service of the deliberately differentiated offer.
   g. Any factors that could reduce the negative impact to capability.
   h. The member’s professional and personal situation, and what types of incentives would encourage the member to continue serving in the position for the agreed period of service.
   i. Any external organisation’s offer of employment to the member.
   j. The flexible working arrangements that the member may wish to access in the position.
      See: Military Personnel Policy Manual, Part 7 Chapter 6, Flexible work arrangements for members of the Australian Defence Force.
   k. Any other relevant matter.
3.5A.6 Deliberately differentiated offer

1. The benefits in an individual member's deliberately differentiated offer are worked out in accordance with this clause.

2. The deliberately differentiated offer may include any of the benefits outlined in the table below.

<table>
<thead>
<tr>
<th>Item</th>
<th>The following benefit...</th>
<th>may be made available from...</th>
<th>until...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Home purchase and sale assistance may be provided after the normal time period for eligibility has expired.</td>
<td>a date specified by CDF</td>
<td>the expiry of the agreed period of service.</td>
</tr>
<tr>
<td></td>
<td>a. Reimbursement of the costs of sale of a home may be considered after the two year time period in subclause 6.2.22.1 has lapsed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Reimbursement of costs of purchasing a home may be considered after the four year time period in paragraph 6.2.22.5.b has lapsed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>See: Chapter 6 Part 2, Home sale or purchase</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Removal assistance which may include a removal and associated benefits to a personal location where benefits are provided, or to another residence within location, outside the normal limits on assistance.</td>
<td>a date specified by CDF</td>
<td>either of the following dates.</td>
</tr>
<tr>
<td></td>
<td>a. In circumstances other than compassionate circumstances.</td>
<td></td>
<td>a. The expiry of the agreed period of service.</td>
</tr>
<tr>
<td></td>
<td>b. Above normal cost limits.</td>
<td></td>
<td>b. A date specified by CDF.</td>
</tr>
<tr>
<td></td>
<td>See: Chapter 6 Part 6, Removals and storage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Allocation of a Service Residence or rent band choice home, at or above the member's rank and bedroom entitlement. The following conditions apply.</td>
<td>a date specified by CDF</td>
<td>the earlier of the following dates.</td>
</tr>
<tr>
<td></td>
<td>a. The higher contribution scheme at clause 7.5.44 does not apply to this benefit.</td>
<td></td>
<td>a. The date the member vacates the residence.</td>
</tr>
<tr>
<td></td>
<td>b. The approved rent band or additional bedroom is to be specified as part of the offer.</td>
<td></td>
<td>b. A date specified by CDF.</td>
</tr>
<tr>
<td></td>
<td>See: Chapter 7 Part 5, Service residences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>An increased rent ceiling. The following conditions apply.</td>
<td>a date specified by CDF</td>
<td>the earlier of the following dates.</td>
</tr>
<tr>
<td></td>
<td>a. Increased rent ceiling may be provided for reasons not specified in clause 7.6.12.</td>
<td></td>
<td>a. The date the member vacates the residence.</td>
</tr>
<tr>
<td></td>
<td>b. The ceiling may be increased up to an amount approved by CDF.</td>
<td></td>
<td>b. A date specified by CDF.</td>
</tr>
<tr>
<td></td>
<td>c. The approved rent ceiling is to be specified as part of the offer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>See: Chapter 7 Part 6, Rent allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>The following benefit...</td>
<td>may be made available from...</td>
<td>until...</td>
</tr>
<tr>
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<td>-----------------------------</td>
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</tr>
<tr>
<td>5.</td>
<td>An additional number of trips in any of the following types of travel for which the member is currently eligible.</td>
<td>the date the agreed period of service begins</td>
<td>either of the following dates. a. The expiry of the agreed period of service. b. An earlier date specified by CDF.</td>
</tr>
<tr>
<td></td>
<td>a. Reunion travel under Chapter 9 Part 3 Division 3.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. Student reunion travel under Chapter 9 Part 3 Division 4.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Recreation leave travel under Chapter 9 Part 4 Division 1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>d. Remote location leave travel under Chapter 9 Part 4 Division 4.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>See: Chapter 9, ADF travel in Australia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>A specified number of days of additional paid leave. The following conditions apply.</td>
<td>the date the agreed period of service begins</td>
<td>either of the following dates. a. The expiry of the agreed period of service. b. An earlier date specified by CDF.</td>
</tr>
<tr>
<td></td>
<td>a. Leave may be granted for up to 20 days for each 12 month period of the agreed period of service.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b. The leave days are in addition to the member's normal leave accrual.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. The leave is non-accruable and expires at the end of each 12 month period.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>d. The leave is to be recorded as if it were short absence, but is not short leave from duty. Payment instead of leave is not available for this leave.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Note: Managers continue to have discretion to approve various leave types but must consider the impact on other leave accruals.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. CDF may choose which of the benefits listed in subclause 2 are to be offered to an individual member after considering the circumstances and matters listed in clause 3.5A.5.

4. The period of each benefit is worked out using the relevant guidance in column 3 and 4 of the table in subclause 2.

5. A retention bonus may also be offered under Part 5 Division 2, Bonus Framework, at the same time as the deliberately differentiated offer.

   See: Part 5 Division 2, Bonus Framework

6. The deliberately differentiated offer may set out any flexible working arrangements provided in accordance with, or in addition to, Military Personnel Policy Manual, Part 7 Chapter 6, Flexible work arrangements for members of the Australian Defence Force.

   See: Military Personnel Policy Manual, Part 7 Chapter 6, Flexible work arrangements for members of the Australian Defence Force.

7. CDF must notify the member of the deliberately differentiated offer using the form at Annex 3.5A.A. The form must set out the benefits and the detailed dates of duration for each benefit.
3.5A.7 How the offer is accepted

1. The member may accept the offer under this Part any time after they receive it, until the latest of the following dates.
   a. Twenty-eight days after the day the offer is made.
   b. A longer period that the CDF decides is reasonable, having regard to the member’s circumstances.

2. An acceptance made under this subclause must be on the form at Annex 3.5A.A.

   See: Annex 3.5A.A, Deliberately differentiated offer form

3. The acceptance must include an undertaking to serve for the period of the agreed period of service, using the form at Annex 3.5A.A.

3.5A.8 Member does not complete the period of agreed service

1. On a day that a member ceases to complete their agreed period of service, they cease to be eligible for benefits under this Part.

2. The member is not required to repay the benefits in their deliberately differentiated offer if the member fails to complete the agreed period of service.

   Note: A member who fails to complete their agreed period of service in relation to a retention bonus may be required to repay an amount of the bonus. Any repayment is worked out in accordance with the rules that apply to the relevant bonus scheme.

   See: Part 5 Division 2, Bonus framework
Annex 3.5A.A: Deliberately differentiated offer form

This form provides information about the offer. It also provides for your formal acceptance of the offer and your agreement to serve until the end of the agreed period of service for which the benefits are paid. Please keep a copy and return the signed original.

Offer and information

This Part provides information about the deliberately differentiated offer being made to you, and is for you to keep.

If you fill in and sign the acceptance form, you are accepting the deliberately differentiated offer made to you and authorised under Chapter 3 Part 5A of Defence Determination 2005/15, Conditions of Service, made under section 58B of the Defence Act 1903.

Offer

The offer made is as follows:

...........................................................................................................................

[member’s name] is hereby offered the following package of benefits by Director General Navy People/Director General Personnel – Army/Director General Personnel – Air Force [delete whichever is irrelevant] for the agreed period of service starting on

..................................................[day/month/year] and ending on ..................................................

The offer is made in relation to the following position that has been identified as a position critical to capability: [delete if offer not directly associated with a position critical to capability]

The offer is made in relation to the skills, knowledge and qualifications required to address the following workforce capability gap: [delete if offer is directly associated with a position critical to capability]
This deliberately differentiated offer has been approved by the CDF or his authorised person. The package of benefits provided in this offer includes the following:

[Delete all rows or dot points that do not form a part of this offer.]

[Complete all details as required. Delete any terms that do not apply.]

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Benefit</th>
<th>Benefit available from...</th>
<th>until...</th>
</tr>
</thead>
</table>
| 1.   | Home purchase and sale assistance that includes the following:  
• Reimbursement of the costs of sale of a home after the two year time period in subclause 6.2.22.1 has lapsed.  
• Reimbursement of costs of purchasing a home after the four year time period in paragraph 6.2.22.5.b has lapsed. | [insert date specified by CDF.] | [insert date of expiry of the agreed period of service.] |
| 2.   | Removal assistance that includes the following:  
• A removal and associated benefits to [a personal location/another residence within location]  
• It is not limited to compassionate circumstances.  
• It is not cost limited. | [insert date specified by CDF.] | [insert date of expiry of the agreed period of service or a date specified by CDF.] |
| 3.   | Allocation of a [service residence/rent band choice home] that [is/has] [insert the approved rent band or additional bedroom(s)].  
**Note:** The higher contribution scheme set out in PACMAN clause 7.5.44 will not apply. | [insert date specified by CDF.] | the earlier of the following dates.  
a. The date the member vacates the residence.  
b. [insert date specified by CDF]. |
| 4.   | Increased rent ceiling to the amount of $[insert monetary amount] | [insert date specified by CDF.] | the earlier of the following dates.  
a. The date the member vacates the residence.  
b. [insert date specified by CDF]. |
| 5.   | Additional number of travel trips for the following types of travel: [delete types of travel to which the member is currently not eligible for or not included as part of this offer]  
• [Insert number] of additional reunion travel under Chapter 9 Part 3 Division 3.  
• [Insert number] of additional student reunion travel under Chapter 9 Part 3 Division 4.  
• [Insert number] of additional recreation leave travel under Chapter 9 Part 4 Division 1.  
• [Insert number] of additional remote location leave travel under Chapter 9 Part 4 Division 4. | [insert date that the agreed period of service begins]. | the earlier of the following dates.  
a. [insert date that is the expiry of the agreed period of service]  
b. [insert date specified by CDF]. |
| 6.   | [Insert number] days of paid leave per calendar year in addition to the member’s normal leave accrual.  
**Note:** This leave is not accruable and expires at the end of each 12 month period. It will not be paid in lieu. | [insert date that the agreed period of service begins]. | the earlier of the following dates.  
a. [insert date that is the expiry of the agreed period of service]  
b. [insert date specified by CDF]. |
Flexible working arrangements provided in accordance with, or in addition to, Military Personnel Policy Manual, Part 7 Chapter 6, Flexible work arrangements for members of the ADF.

[Insert specific details of agreed flexible working arrangements]

<table>
<thead>
<tr>
<th>Item</th>
<th>Description of Benefit</th>
<th>Benefit available from...</th>
<th>until...</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Flexible working arrangements provided in accordance with, or in addition to, Military Personnel Policy Manual, Part 7 Chapter 6, Flexible work arrangements for members of the ADF.</td>
<td>[insert date that the agreed period of service begins].</td>
<td>the earlier of the following dates. a. [insert date that is the expiry of the agreed period of service] b. [insert date specified by CDF].</td>
</tr>
</tbody>
</table>

A retention bonus may also be offered under Chapter 3 Part 5 Division 2, Bonus framework, at the same time as this deliberately differentiated offer. A retention bonus is separate from this offer. [delete as appropriate]

Signed by:

Name:........................................................................Rank:................................................Date:...................

Director General Navy People/Director General Personnel – Army/Director General Personnel – Air Force [delete whichever is irrelevant].

Information about the deliberately differentiated offer

I understand that my acceptance of this offer is subject to the following terms and conditions.

1. If I accept the deliberately differentiated offer under this Part, I agree to serve for the period specified in this offer. This period is called my ‘agreed period of service’. The agreed period of service could be for either of the following circumstances:
   a. In a specified position critical to capability.
   b. In relation to an identified workforce capability gap, where retention of my skills, knowledge and qualifications is essential to ADF strategic or operational capability.

2. I am entitled to the benefits listed in deliberately differentiated offer that was offered to me, until the day I cease serving toward my agreed period of service. This could happen when I complete it or if I leave before I complete it.

3. I am aware that Defence will treat the information in this acceptance form as my personal information covered by the Privacy Act 1988 and I consent to Defence using it in de-identified form for reporting and statistical purposes. I am aware that if I publish this information to others, I may make the protections provided to me by the Privacy Act ineffective.

Full details of the deliberately differentiated offer framework can be found in Chapter 3 Part 5A of Defence Determination 2005/15, Conditions of Service.

This acceptance form, and the related parts of Defence Determination 2005/15, is the whole agreement between us about the nature of this framework. It overrides any other prior understanding or agreement about the framework. This would include, for instance, things I may have been told about the framework or things I may have read elsewhere.
Acceptance of offer and undertaking to serve an agreed period

I, ............................................................................................................
(Rank) ................................................ (Last name) ........................................ (Given name)

............................................................................................................
(Service number) ........................................................ (Employee ID)
accept the deliberately differentiated offer and undertake to serve for the **agreed period of service**
starting on ................................................................... [day/month/year] and ending on .................................... [day/month/year].

I acknowledge that the provisions of Chapter 3 Part 5A of Defence Determination 2005/15, **Conditions of Service**, have been brought to my notice.

*Please tick the boxes that apply below.*

| I have read and understood this form. | Yes [ ] | No [ ] |
| I have sought independent legal advice in relation to this undertaking. | Yes [ ] | No [ ] |
| I have sought independent financial advice in relation to this undertaking. | Yes [ ] | No [ ] |

Dated this .................................................. day of .................................................. 20

_________________________ __________________________
Signed Printed name

**Witness**

(This person must be above the applicant in the chain of command)

_________________________ __________________________
Signed Printed name and rank

I, ............................................................................................................
(Rank) ................................................ (Last name) ........................................ (Given name)
(Employee ID)
verify that the member has met all requirements of the deliberately differentiated offer.

_________________________ __________________________
Approved Administrator authorised for and on behalf of the member's Service
EXPLANATORY STATEMENT

Defence Determination 2014/51

This Determination amends Defence Determination 2005/15, Conditions of service (the Principal Determination), 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 non-legislative instruments and are subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act.

Chapter 3 of the Principal Determination sets out provisions dealing with salaries and bonuses for members of the Australian Defence Force (ADF).

The purpose of this Determination is to provide for new arrangements for a suite of additional benefits for members that intends to facilitate the following outcomes:

- The member who is critical to capability is retained.
- A position critical to capability is no longer at risk.
- The Defence factors that influenced the member to consider leaving the ADF are weakened.
- A succession plan to address the workforce capability gap is implemented.
- A critical workforce capability gap is resolved.

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

Clause 2 of this Determination provides that the Determination commences on the date of signature.

Clause 3 specifies that the amendment is made to the Principal Determination, as amended.

Clause 4 inserts a new item into the contents list for Chapter 3 of the Principal Determination, contained in clause 3.0.2 of the Principal Determination. The new item refers to the new Part 5A inserted by clause 5.

Clause 5 provides that Part 5A is inserted into Chapter 3 of the Principal Determination, as set out in Schedule 1 of this Determination.

The new Part 5A, Deliberately differentiated offer for members, provides for the deliberately differentiated offer, and has 8 clauses.

- Clause 3.5A.1 sets out the purpose of the Part.
- Clause 3.5A.2 sets out a list of definitions and their meanings used throughout the Part and Annex 3.5A.A.
- Clause 3.5A.3 describes a member eligible for a deliberately differentiated offer. A deliberately differentiated offer is confined to a member of the Permanent Force, or a Reserve member on continuous full-time service, and who the CDF (or his authorised decision-maker) has identified as a member critical to capability.
- Clause 3.5A.4 describes situations that may delay a member's commencement of the agreed period of service for the offer. They are members not on paid service, those serving out obligations under other schemes or regulations, and members on Reserve service.
- Clause 3.5A.5 sets out a number of considerations the CDF must have regard to before deciding that a member be given a deliberately differentiated offer. It also sets out a list of matters the CDF must consider before deciding which benefits in this Part to include in the deliberately differentiated offer.
• Clause 3.5A.6 sets out the benefits (and their specified lifespan) from which the CDF may choose to form the suite of benefits offered to the member, and prescribes that the benefits offered are notified to the member. It also provides that flexible working arrangements (in accordance with, or in addition to, Defence Instruction (General) Personnel 49-4, *Flexible work arrangements for members of the ADF*, made under section 9A of the Act), may form a part of this offer. A retention bonus under Chapter 3 Part 5 Division 2 of the Principal Determination may be offered to the member at the same time as this deliberately differentiated offer.

• Clause 3.5A.7 describes the process for accepting the deliberately differentiated offer.

• Clause 3.5A.8 provides that if a member ceases to complete the agreed period of service, they cease to be eligible for the benefits under this Part. This clause also provides that if a member fails to complete the agreed period of service, the member is not required to repay the benefits in their deliberately differentiated offer. The administrative note, however, makes clear that a member who fails to complete the agreed period of service in relation to a retention bonus will be required to repay the amount as prescribed by the rules of that bonus.

Clause 6 provides that Annex 3.5A.A is inserted into Chapter 3 of the Principal Determination, as set out in Schedule 2 of this Determination.

The new Annex 3.5A.A, *Deliberately differentiated offer form*, provides a form to be used for giving a deliberately differentiated offer to a member. It contains general information about the offer, the suite of benefits to be provided, and an area for the member to formally accept the offer and acknowledge commitment by the member to serve for the agreed period.

**Authority:** Section 58B of the *Defence Act 1903*
**Statement of Compatibility with Human Rights**


**Defence Determination 2014/51, Deliberately differentiated offer for members**

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**

Defence Determination 2014/51 provides new arrangements for a suite of additional benefits for ADF members that intend to facilitate the following outcomes:

- The member who is critical to capability is retained.
- A position critical to capability is no longer at risk.
- The Defence factors that influenced the member to consider leaving the ADF are weakened.
- A succession plan to address the workforce capability gap is implemented.
- A critical workforce capability gap is resolved.

**Human rights implications**

This Determination engages the following human rights:

*Right of everyone to the opportunity to gain his living by work which he freely chooses or accepts*  
The right to the opportunity to freely choose work to gain their living engages Article 6(1) of the International Covenant on Economic, Social and Cultural Rights.

*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(a) guarantees just and favourable conditions of work, particularly remuneration and a decent living. Article 7(d) guarantees rest, leisure and reasonable limitation of working hours.

*Right to an adequate standard of living*  
The right to an adequate standard of living engages Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Article 11(1) guarantees everyone an adequate standard of living for themselves and their families (including adequate food, clothing and housing), and the continuous improvement to those conditions.

*Legitimate objective*: This Determination advances the specific rights in articles 6(1), 7(a), 7(d) and 11(1) of the International Covenant on Economic, Social and Cultural Rights. This Determination is intended to retain ADF members who are critical to ADF capability for a finite period of time by offering them a suite of benefits for themselves and their families. These benefits provide for financial assistance in the purchase or selling of their own home, removal from one location to another, provision of a home (and financial assistance) that is greater than generally afforded other members at the same rank and family size, additional travel trips to reunite members of the family, and additional leave days for rest and leisure. All of these benefits, although provided to the ADF member, are enjoyed by the member's family.

*Reasonable, necessary and proportionate*: The agreement of an ADF member to serve a specified period of time beyond their original agreement with their Service, and provide organisational assurance that a critical workforce capability gap is resolved, entitles the ADF member to additional benefits to compensate for the inconvenience of Service life during the extended period of service. This arrangement is in agreement with the remuneration right provided by articles 6(1) and 7(a), the rest and leisure afforded by article 7(d), and the improvement to the standard of living provided in article 11(1) of the International Covenant on Economic, Social and Cultural Rights.
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.

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