EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Miscellaneous and salary non-reduction) Determination 2019 (No. 25)

This Determination amends Defence Determination 2016/19, 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 legislative instruments subject to the Legislation Act 2003. These instruments are also subject to the interpretation principles in the AIA Act.

This Determination amends the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 3 sets out provisions dealing with salaries and bonuses.
- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 5 sets out provisions dealing with leave.
- Chapter 7 sets out provisions dealing with housing and meals.
- Chapter 8 sets out provisions dealing with members and their dependants.
- Chapter 9 sets out provisions dealing with travel costs in Australia.
- Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

The purpose of this Determination is to make the following changes.

- It makes minor technical adjustments, formatting changes and correction of spelling and grammatical errors.
- It omits administrative matters that are not legislative in nature.
- It extends a salary non-reduction cessation date and provides a transitional provision.

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

Section 2 provides that this instrument commences on 5 September 2019.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Miscellaneous amendments

Section 1 omits and substitutes subsection 3.2.58.2 of the Principal Determination which provides that a member on continuous full-time service is to be paid the non-reduction supplement at the rate payable under section 3.2.56. The subsection has been amended to contemporise the rule.

Section 2 amends section 4.9.2 of the Principal Determination which provides the contents list for Chapter 4 Part 9. The section is being amended to omit Annex 4.9.A from the list. The Annex was repealed by Defence Determination 2017/43 Health support allowance – amendment.

Section 3 amends subsection 5.4.8.3 of the Principal Determination which provides the formula for calculating basic recreation leave credits. The amendment corrects the type of leave to be used in the formula to basic recreation leave.
Sections 4 and 5 amend section 5.4.31 of the Principal Determination which provides the conditions for the grant of recreation leave. Section 4 omits and substitutes subsection 5.4.31.1 which provides that a member must not be granted recreation leave if they do not hold enough recreation leave credit for the period of absence. The subsection has been amended for clarity and the effect remains unchanged. Section 5 omits a see note which is not legislative in nature.

Section 6 amends section 7.0.2 of the Principal Determination which provides the contents list for Chapter 7. The section is being amended to omit Annex 7.G from the list, the Annex has been omitted by section 16 of this Determination.

Section 7 omits section 7.1.3 of the Principal Determination which describes different types of housing assistance available to members. The section is being omitted as is not legislative in nature.

Section 8 amends the table in section 7.1.14 of the Principal Determination which provides terms and definitions used in Chapter 7. The table is being amended to include a definition of ‘Contribution’ as a term that is used throughout Chapter 7. This definitions was previously provided in section 7.8.3 which has been omitted by section 12 of this Determination.

Sections 9 and 10 amend subparagraph 7.1.16A.2.d.ii and subsection 7.4.27B.2 of the Principal Determination to correct typographical errors.

Section 11 omits and substitutes subsection 7.7.14.3 of the Principal Determination which sets out the contribution a member must make for choice accommodation that is above their rent ceiling. The subsection has been amended to omit the examples, notes and see notes which are not legislative in nature.

Section 12 omits section 7.8.3 Definitions of the Principal Determination which provides definitions used for the purpose of Chapter 7 Part 8. The definition of ‘Contribution’ is now provided under section 7.1.14 as inserted by section 7 of this Determination. The ordinary meaning is sufficient to establish understanding of the other terms that were previously provided in this section.

Sections 13, 14 and 15 amend paragraph 7.8.17.1A.b, subsection 7.8.20.3 and subsection 7.8.23.2 of the Principal Determination to omit see notes and an example which are not legislative in nature.

Section 16 omits Annex 7.G of the Principal Determination which provided a visual example of how rent allowance is worked out. The rules on calculating the amount of rent allowance a member is eligible to receive are detailed in Chapter 7 Part 8 Division 4. This Annex is not legislative in nature and may be replicated as guidance.

Section 17 omits and substitutes subsection 8.3.6.7 of the Principal Determination which provides that the CDF may approve a member to be a member with dependants (unaccompanied) in a specified circumstance. The subsection is being amended to remove provisions that were inconsistent with rules provided elsewhere in the Principal Determination.

Section 18 omits Chapter 8 Part 3 Division 2 from the Principal Determination which contained a summary of benefits that a member with dependants (unaccompanied) may be eligible to receive. The Division referred to rules provided throughout the Principal Determination and is not legislative in nature.

Section 19 omits and substitutes the title of section 8.6.5 of the Principal Determination to more accurately reflect the content of the section.

Section 20 omits and substitutes section 9.5.15 of the Principal Determination which provides the meaning of normal accommodation stock for the purpose of travel within Australia on Defence business. The section is being amended to contemporise the rule and to omit information that is not legislative in nature.

Section 21 omits and substitutes subsection 9.5.17.2 of the Principal Determination which sets out the maximum daily limits for meals and incidentals for a member who lives out while travelling on Defence business. The substitution is to correctly reference specified columns in Annex 9.5.A. The opportunity was also taken contemporise the rule and to clarify the time periods for the limit of benefit for meals and incidentals.

Section 22 amends subsection 15.3.7.2 of the Principal Determination to improve grammatical accuracy of the provision.

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Schedule 2—Salary non-reduction amendments

Section 1 amends Annex 3.2.C of the Principal Determination which provides salary non-reduction periods for Flight Test Engineers. The cessation date for an Air Force Flight Test Engineer in Pay grade 7 has been extended by an additional year from 13 August 2019 to 13 August 2020 to enable the remaining members to continue to be remunerated under the aircrew legacy salary.

Section 2 provides a transitional provision for members of the Air Force who were on a salary non-reduction provision as a Flight Test Engineer in Pay grade 7 on 13 August 2019. The transitional provision allows a member to be paid the difference between the salary they received from 14 August 2019, when the salary non-reduction provision ceased, and commencement of this Determination and the salary they would have received had the change in Schedule 2 section 1 commenced on 14 August 2019.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation 2016. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Consultation was not necessary for the purpose of Schedule 1 which provides amendments of an administrative or technical nature only.

Air Force was consulted in regards to the change in Schedule 2 of this Determination.

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

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

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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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

This Determination makes technical amendments, formatting changes and correction of spelling and grammatical errors to Defence Determination 2016/19, Conditions of service. The Determination also removes some definitions that are not required to be defined and omits administrative matters that are guidance rather than rules.

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 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

Salary non-reduction

Legitimate objective: Schedule 2 of this Determination ensures that members of the Air Force who were formerly categorised as Flight Test Engineers and were in Pay grade 7 maintain their level of remuneration based on their qualifications and skills.

Reasonable, necessary and proportionate: This Determination extends the salary non-reduction period to 13 August 2020 for former Air Force Flight Test Engineers who were remunerated under Pay grade 7. This will provide enough time for these members to enter an employment category or speciality field that has a salary rate that is at least equal to the salary rate they received as Flight Test Engineers.

A transitional provision has also been included to provide that members who were eligible for salary non-reduction between 13 August 2019 and the commencement of this Determination are eligible for the payment of the difference between the amount of salary they received and the amount that would have been payable had this Determination commenced on 14 August 2019. This adjustment ensures that the member is not financially disadvantaged.

Miscellaneous amendments

The amendments made under Schedule 1 of this Determination do not engage any of the applicable rights or freedoms.

Conclusion

This Determination is compatible with human rights. Schedule 1 does not raise any human rights issues and Schedule 2 advances the protection of human rights.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions