EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (District allowance for members of the Reserve and Technical amendments) Determination 2019 (No. 26)

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 (the 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 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 8 sets out provisions dealing with members and their dependants.
- Chapter 16 sets out provisions dealing with overseas hardship locations.

This Determination has the following purposes.

- To set a rate of district allowance for a member of the Reserve who is undertaking Reserve service in a remote location and is required to live-out.
- To make minor technical adjustments, formatting changes and correction of spelling and grammatical errors.

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

Section 2 provides that this instrument commences on 14 November 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—District allowance for members of the Reserve amendment**

Section 1 amends the table at section 4.4.9 of the Principal Determination. This section provides the rate of district allowance for a member who lives at a remote location. Table item 3 details the rates for members who live out in a remote location. The amendment includes a new condition at table item 3 to provide a rate for a member of the Reserve who is undertaking service in a remote location and is required to live out.

**Schedule 2—Technical amendments**

Section 1 amends section 8.3.2 of the Principal Determination, which provides the contents for Chapter 8 Part 3. Defence Determination Amendment (Miscellaneous and salary non-reduction) Determination (No. 25) omitted Division 2 of Chapter 8 Part 3 of the Principal Determination. The removal of Division 2 from the contents was overlooked. Section 1 makes this change.

Section 2 omits a see note from paragraph 8.3.4.d of the Principal Determination, which referenced Chapter 8 Part 3 Division 2. Defence Determination Amendment (Miscellaneous and salary non-reduction) Determination (No. 25) omitted Division 2 of Chapter 8 Part 3 so the reference is invalid.

Section 3 amends section 16.5.7 of the Principal Determination, which provides an accommodation benefit for members on long-term posting to Papua New Guinea. The section was missing the word ‘are’ from a sentence. Section 3 inserts the word.
Consultation

Before this Determination was made, consultation was undertaken with Pay and Administration Branch and the Directorate of Military Remuneration. The rule maker was satisfied that 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

The purpose of this Determination is to include a rate of district allowance for a member of the Reserve who is undertaking Reserve service in a remote location and is required to live out.

This Determination makes technical amendments to Defence Determination 2016/19, Conditions of service.

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.

Right to an adequate standard of living

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

District allowance for members of the Reserve

Legitimate objective: ADF members who are posted to or performing temporary duty in remote locations may experience adverse living conditions during service. This could cause significant adverse effects on the lifestyle or welfare of members and their dependants, as a result of the living conditions at the remote location. Those hardship conditions can include, but are not limited to, climate, health care facilities, infrastructure and isolation.

Reasonable, necessary and proportionate: This Determination adjusts ADF district allowance to ensure members of the Reserve who are undertaking duty in a remote location and are required to live out do not suffer a financial disadvantage.

Technical amendments

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

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Kirk Marcel Lloyd, Assistant Secretary People Policy and Employment Conditions