EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2020 (No. 13)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the Defence Act 1903 (Defence Act) 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.

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

- Chapter 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 3 sets out provisions dealing with salaries and bonuses.
- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 6 sets out provisions dealing with relocations on posting in Australia.
- 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.
- Chapter 16 sets out provisions dealing with overseas hardship locations.
- Chapter 17 sets out provisions dealing with warlike and non-warlike deployments.

The purpose of this Determination is to:

1. Provide a salary non-reduction period of 5 years for members in the following employment categories.
   - Information Systems Technician Grade 2 (Pay grade 3).
   - Information Systems Advanced Technician (Pay grade 4).
   - Information Systems Detachment Commander (Pay grade 5).
2. Provide a salary non-reduction period of 2 years for a member in the Army in the Electronic Warfare Detachment Commander employment category.
3. Provide a salary non-reduction period of 5 years for members in the Army Reserve Telecommunications Systems Linesman Grade 1 employment category.
4. Extend the eligibility criteria for payment of the Reserve capability completion bonus – capability at short-notice allowance and the health support allowance – Reserves to include days on which the member was performing continuous full-time service while subject to a call out order made by the Governor General and periods where the member had an agreed pattern of Reserves service that they were unable to fulfil as a consequence of restrictions or limitations imposed by State or Territory governments, or due to cancellation of that pattern of service to control an infectious disease. These amendments have been made as a part of the ADF’s response to recognising service provided by members of the Reserves during the 2019/20 bushfire season and the impact of the COVID19 pandemic and will be enduring.
5. Amend the rates for Disturbance allowance and Vehicle allowance.
6. Include Operation ORENDA as a new operation for the purpose of payment of deployment allowance.
7. Include Operation FORTITUDE as a new operation for the purpose of payment of deployment allowance and provide a transitional provision for the payment of deployment allowance for members deployed on Operation FORTITUDE and Operation PALADIN.

8. Provide a retrospective payment of deployment allowance to members deployed in the prescribed area in Libya.

9. Implement an annual adjustment to the child supplement allowance and location allowance for a member posted overseas.

10. Amend the benchmark schools for Canada.

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

Section 2 provides that this instrument commences on 9 July 2020.

Section 3 provides that this instrument has authority under section 58B of the Defence Act 1903.

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—Employment categories salary non-reduction amendments

Sections 1, 2 and 3 amend pay grades 3. 4 and 5 of Part 2 of the table in Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) together with the commencement date of the salary non-reduction period and the date that the period ends. The employment categories of Information Systems Technician Grade 2 (Reserve), Information Systems Advanced Technician (Reserve) and Information Systems Detachment Commander (Reserve) each with a commencement date of 9 July 2020 have been inserted into the table. The salary non-reduction period enables an affected member to be remunerated at their current rate of salary until 9 July 2025, providing sufficient time for the member to obtain the relevant training required to advance to a rate of salary higher than their current rate.

Section 4 amends pay grade 1 of Part 2 of the table in Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) together with the commencement date of the salary non-reduction period and the date that the period ends. The employment category of Telecommunications Systems Linesman Grade 1 (Reserve) has been inserted into the table with a commencement date of 9 July 2020. The salary non-reduction period enables an affected member to be remunerated at their current rate of salary until 9 July 2025, providing sufficient time for the member to obtain the relevant training required to advance to a rate of salary higher than their current rate.

Section 5 amends pay grade 5 of Part 2 of the table in Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) together with the commencement date of the salary non-reduction period and the date that the period ends. The employment category of Electronic Warfare Detachment Commander has been inserted into the table with a commencement date of 9 July 2020. The salary non-reduction period enables an affected member to be remunerated at their current rate of salary until 9 July 2022, providing sufficient time for the member to obtain the relevant training required to advance to a rate of salary higher than their current rate.

Schedule 2—Reserve allowances amendments

Section 1 amends the Principal Determination by inserting a definition for 'Pattern of Reserve service' after section 1.3.50. The definition has been taken from section 4.9.18 of the Principal Determination from where it is omitted by section 5 of this Schedule.

Section 2 amends section 3.5.14H of the Principal Determination which lists the eligibility criteria for the Reserve capability completion bonus. The amendment omits paragraph c from the section, which prevented a member from being on continuous-full time service from being eligible to receive the bonus.

Section 3 amends section 3.5.14I of the Principal Determination which specifies the criteria a member must satisfy in order to receive payment of the Reserve capability completion bonus. The amendment
remakes subsection 1 to specify the types of days that can be counted towards completing the number of
days specified in the member’s Service Category 4 undertaking.

In addition to days of reserve service, days spent undertaking continuous full-time service under a call out
order made under section 28 of the Defence Act after 27 November 2020, or days that were unable to be
performed after 27 March 2020 as a consequence of either restrictions or limitations imposed by State or
Territory governments, such as a health directive or the cancellation of a pattern of service to comply with
non-mandatory guidelines for the control of an infectious disease. These amendments have retrospective
effect in that they enable days that were served, or would have been served, prior to the commencement
of this Determination to be counted towards a member’s eligibility for payment of the Reserve capability
completion bonus. This does not adversely affect any rights, duties or obligations of a person, other than
the Commonwealth.

Section 4 amends section 4.9.17 which sets the eligibility criteria for the health support allowance that is
payable to members of the Reserves. The amendment omits and remakes subsection 1 enabling days, in
addition to Reserve service days, on which the member undertakes continuous full-time service under a
call out order made under section 28 of the Defence Act and days that were unable to be performed as a
consequence of either restrictions or limitations imposed by State or Territory governments, such as a
health directive, or the cancellation of a pattern of service to comply with non-mandatory guidelines for
the control of an infectious disease to be counted towards satisfying the required 20 days. The
amendments to this section have no retrospective effect.

Section 5 amends section 4.9.18 which provides definitions that apply in Chapter 4 Part 9 Division 4 of
the Principal Determination. The amendment omits the definition of ‘Pattern of Reserve service’ from the
section, as it is remade in Chapter 1 Part 3 of the Principal Determination by section 1 of this Schedule.

Schedule 3—Disturbance allowance and Vehicle allowance amendments

Section 1 omits and substitutes the table in subsection 6.1.6.2 of the Principal Determination. The
subsection provides rates for disturbance allowance to compensate members for incidental relocation
costs. The rates have been adjusted to reflect a 1.7% movement in the All Groups component of the
Consumer Price Index for the period September 2018 to September 2019.

Section 2 amends subsection 6.1.12.1 of the Principal Determination. The subsection provides a payment
for a member whose child must change schools due to an ADF removal. This rate has been increased to
reflect a 1.7% movement in the All Groups component of the Consumer Price Index for the period
September 2018 to September 2019.

Section 3 omits and substitutes the table in paragraph 9.6.25.b of the Principal Determination. The table
sets out the vehicle allowance rates for various vehicle engine sizes. The rates have been advised by a
data service provider.

Schedule 4—Child supplement and location allowance amendment

Section 1 omits and substitutes subsection 15.2A.20.2A of the Principal Determination which provides the
base rate for the calculation of child supplement allowance payable to a member posted overseas. The
rates provided in the table have been increased to reflect the change to the average annual salary of a
member posted overseas. The subsection has also been amended to contemporise the drafting style.

Section 2 omits and substitutes subsection 16.2A.5.1 of the Principal Determination which provides the
rate of location allowance payable to a member performing duty in a hardship location. The rates
provided in the table have been increased to reflect the change to the average annual salary of a member
posted overseas. The subsection has also been amended to contemporise the drafting style.

Schedule 5—Benchmark schools – Canada amendment

Section 1 amends Annex 15.6.A of the Principal Determination, which provides a list of schools that set
the ‘benchmark’ for the amount of education assistance to be reimbursed to a member who has a child
who is a dependant and required education at an overseas posting location. After a re-assessment of the
benchmark schools in Canada, the existing benchmark school for Pre-school / Kindergarten and Primary
School (grades 1 – 3) is no longer considered appropriate due to a fee restructure and limited access to
placements. The Annex is amended by substituting Item 3 with the updated benchmark schools in
Canada for Pre-school/Kindergarten and Primary school (grades 1 – 3).
Schedule 6—Deployment allowance

Section 1 inserts a new table item 3A into subsection 17.7.6.1 of the Principal Determination for Operation FORTITUDE. There are three separate rates for different countries within the specified area of the deployment based on the varying threat levels in each of those countries.

Section 2 inserts a new table item 8A into subsection 17.7.6.1 of the Principal Determination for Operation ORENDA. The new item sets out the title of the operation together with the specified area and the daily rate of deployment allowance.

Section 3 omits and substitutes table item 9 of the Principal Determination. The table provides the daily rates of deployment allowance within the specified area of a deployment. There are three separate rates for different countries within the specified area of the deployment based on the varying threat levels in each of those countries.

Schedule 7—Deployment allowance – Libya

This Schedule provides a retrospective payment of deployment allowance to a member who was on a deployment in the land, territorial waters and superjacent airspace of Libya between 30 June 2017 and 5 June 2019. The retrospective effect of this Schedule does not adversely the rights, responsibilities or duties of a person other than the Commonwealth. It is beneficial in nature.

The following sections are included.

- Section 1 identifies the members the Schedule applies to.
- Section 2 establishes the eligibility criteria for the deployment allowance.
- Section 3 provides the rates of deployment allowance over three periods within the deployment period.
- Section 4 provides that the provisions for temporarily leaving the Operation area under Defence Determination 2016/19, Conditions of service section 17.7.8 apply, as in force from time to time.

Defence Determination 2016/19, Conditions of service is incorporated into this Schedule as amended by this Determination.

Schedule 8—Transitional provisions – Reserve allowance

Section 1 provides a definition of ‘the Determination’, being Defence Determination 2016/19, Conditions of service, which is incorporated into this Schedule as in force from time to time.

Section 2 affects a member who becomes eligible for the Reserve capability bonus as a consequence of schedule 2 of this Determination. Normally, the Reserve Capability bonus is paid based on 12 months’ service from date of the previous payment. This section sets the start date for the next 12 month period as the day on which the member would have become eligible for the payment had schedule 2 been in force at the time. This ensure the member is not being detrimentally affected by the amendment in respect of the payment of their next Reserve capability bonus.

Section 3 make a payment equivalent to the health support allowance to member who were ineligible for the allowance in the 2019/20 financial year, but would have been eligible had schedule 2 been in force at that time. Unlike the Reserve capability bonus, Health support allowance is based on financial years.

Schedule 9—Transitional provisions – Operation FORTITUDE and Operation PALADIN

Section 1 provides a transitional payment for a member deployed and performing duty on Operation FORTITUDE between 30 April 2019 and the commencement of this Determination. The transitional provision provides for an eligible member to be paid deployment allowance for duty performed in the specified operational area. Separate rates are provided over three periods within the deployment period.

Section 2 provides a transitional payment for a member deployed and performing duty on Operation PALADIN between 16 September 2019 and the commencement of this Determination. The transitional provision provides for an eligible member to be paid deployment allowance for duty performed in the specified operational area as restructured by Schedule 1 section 2 of this Determination. Separate rates are provided over three periods within the deployment period.
Defence Determination 2016/19, Conditions of service is incorporated into this Schedule as amended by this Determination.

**Consultation**

Schedule 1: The Defence Force Remuneration Tribunal and Army were consulted in the making of this schedule.

Schedules 2 and 8: Navy, Army and Air Force and Joint Services Support Division were consulted in the development of schedules 2 and 8.

Schedule 3: Consultation is not considered necessary in the allowance adjustment process as it falls within the bounds of routine housekeeping of an established benefit. The adjustments are either aligned with the Consumer Price Index or from data from a recognised data provider. They are made according to established policy.

Schedule 4: Navy, Army and Air Force were consulted in the making of this Schedule.

Schedules 6, 7 and 9: The Director Nature of Service and Joint Operations Command were consulted on the making of these Schedules.

Schedule 5: Navy, Army, Air Force, the Directorate of Attaché and Overseas Management, Department of Defence, were consulted in the development of the changes in this Schedule.

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 has the following purposes.

1. To provide a salary non-reduction period for members in specified employment categories of either 2 or 5 years.

2. To extend the eligibility criteria for payment of the Reserve capability completion bonus – capability at short-notice allowance and the health support allowance – Reserves. The amendment enables days on which the member was performing continuous full-time service while subject to a call out order made by the Governor General and periods where the member had an agreed pattern of Reserves service that they were unable to fulfil as a consequence of restrictions or limitations imposed by State or Territory governments, or due to cancellation of that pattern of service to control an infectious disease to be counted towards meeting the minimum requirements for the payments.

3. To amend the rates for Disturbance allowance and Vehicle allowance.

4. To amend the benchmark schools for Canada.

5. To extend eligibility for deployment allowance to new operations.

6. To provide a retrospective payment of deployment allowance to members deployed in the prescribed area in Libya.

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.

The protection of a person's right to care for dependants.

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children. The education assistance provisions in this Determination advance the rights under Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education.

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.

Schedule 1 of this Determination advances the human right of just and favourable working conditions by ensuring that ADF members who are in specified employment categories maintain their level of remuneration based on their qualifications and skills while undergoing re-categorisation.

Schedules 2 and 8 of this Determination advance the human right of just and favourable working conditions by extending the days counted towards the Reserve capability completion bonus and the health support allowance to include days that would not have ordinarily counted towards the allowances.

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This provides an equitable solution for members who were unable to complete the requirements for the payments but for intervening events occurring. In this case, the events include undertaking compulsory continuous full-time service in response to an order of the Governor General and limitations or restrictions imposed by a State or Territory, or restrictions imposed Defence for the purpose of controlling an infectious disease, such as COVID-19.

Schedule 3 of this Determination advances human right of just and favourable working conditions by ensuring that the member is not financially disadvantaged as a consequence of changes to the consumer price index by adjusting disturbance and vehicle allowances to ensure that rates of the allowances remain contemporary.

Schedule 4 of this Determination advances human right of just and favourable working conditions by ensuring that members of the ADF continue to receive just and favourable conditions of work and their families can maintain an adequate standard of living while posted to overseas locations.

Schedule 5 of this Determination advances the human right of an adequate standard of living and the right to education by ensuring the benchmark schools in Canada remain contemporary and appropriate for the periods of service member may have a child attending school in Canada.

Schedule 6 and 7 of this Determination advances the human right of just and favourable working conditions by ensuring that members of the ADF are appropriately remunerated while on deployment. Defence requires its members to perform duty in overseas locations which are areas of military conflict and therefore provides additional benefits that recognises the risks and the conditions in which the member may be required to work.

Schedule 9 of this Determination advances the human right of just and favourable working conditions by ensuring that the member a member who was deployed on Operation FORTITUDE or Operation PALADIN before the commencement of this determination is eligible for the payment of the difference between the amount they received and the amount that would have been payable had this Determination commenced on 30 April 2019.

Conclusion

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions