

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination 2021 (No. 7)

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.

For the purpose of incorporating Defence Force Remuneration Tribunal (DFRT) determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being incorporated in this determination in accordance with section 14(1)(b) of the Legislation Act, unless otherwise specified. The DFRT determinations are incorporated as in force from time to time.

The Determination makes references to sections of the *Defence Regulation 2016* (the Defence Regulation). This Instrument is 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.

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

- Chapter 1 which sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 2 which sets out provisions dealing with joining and leaving.
- Chapter 3 which sets out provisions dealing with salaries and bonuses.
- Chapter 4 which sets out provisions dealing with allowances and reimbursements.
- Chapter 5 which sets out provisions dealing with leave.
- Chapter 6 which sets out provisions dealing with relocations on posting in Australia.
- Chapter 7 which sets out provisions dealing with housing and meals.
- Chapter 8 which sets out provisions dealing with members and their dependants.
- Chapter 9 which sets out provisions dealing with travel costs in Australia.
- Chapter 12 which sets out provisions dealing with overseas conditions of service.
- Chapter 13 which sets out provisions dealing with short-term duty overseas.
- Chapter 14 which sets out provisions dealing with relocating to or from long-term posting overseas.
- Chapter 15 which sets out provisions dealing with living and working on long-term posting overseas.
- Chapter 16 which sets out provisions dealing with overseas hardship locations.
- Chapter 17 which sets out provisions dealing with warlike and non-warlike deployments.

The purpose of this Determination is:

- To make technical amendments which include, updating out of date references and remove information that is non-legislative in nature, to more clearly express the CDF decision points within some sections, changing the name of Defence Community Organisation to Defence Member and Family Support as a consequence of organisational change, substituting the Assistant Secretary People Policy and Conditions for the CDF as the decision maker for approving a child who is a dependant to attend St John's College, Southsea, England or Ermitage International School of France, Maison-Laffite, France in year 9 and below at Commonwealth expense in exception circumstances, and redrafting some sections to correct grammatical and typographical errors and to bring them into line with contemporary drafting standards.
- Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.
- To prevent members being categorised as a member with dependants (unaccompanied) under subsection 8.3.6.7 if the categorisation would result in the member's dependants who are children being left unaccompanied by an adult.
- To enable members on long-term posting overseas to be reimbursed for the cost of one COVID-19 test for each school aged dependant per school term. The reimbursement is only to be provided if the school has made the test a mandatory requirement in order for the child to attend the school.
- To define the term of 'DFRT allowance' to provide a single term used in the Principal Determination when an allowance determined by the DFRT is referenced, and to make consequential amendments to reflect this change.
- To provide a salary non-reduction period of 5 years for Navy personnel in employment categories of Communication and Information Systems — Communication Grades 4 and 5, and Communication and Information Systems — Information Grades 4 and 5. This will preserve the salary of members who do not currently meet the new prerequisites for the skill grade while the member completes the prescribed service and training requirements to advance to a higher pay grade in the new Communications and Information System structure.

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 2016. Also, a person may make a complaint to the Defence Force Ombudsman.

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

Section 2 provides that sections 1 to 4 of this instrument and anything in this instrument not elsewhere covered by the table commences on the day after the instrument is registered. This provision provides that Schedules 1 to 4 commence on 10 June 2021.

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 – Miscellaneous amendments

Sections 1, 3, 4, 9, 12, 13, 18, 22, 27, 30, 31, 34, 50, 56, 69 to 71, 80 to 83, amend various sections in the Principal Determination to replace the term 'where' with 'if' to reflect contemporary drafting standards.

Sections 2, 10, 11, 37, 40, 41, 43, 45 to 49, 51 to 55, 57 to 61, 66, 67, 73 to 79, 87, 88 and 90 omit Defence Community Organisation, or DCO, wherever they appear, in the Principal Determination and replaces them with Defence Member and Family Support.

Sections 5 and 32 omit the see notes in section 1.3.91 and subparagraph 7.8.23.1.b.iii, respectively. The see notes are non-legislative and administrative in nature and are removed.

Sections 6 and 62 omit the notes in section 1.3.91 and subsection 8.9.7.1, respectively. The see notes are non-legislative and administrative in nature and are removed.

Section 7 amends subsection 1.5.3.2 of the Principal Determination which provides that a person who applies for a benefit under the Principal Determination is responsible for informing themselves about the benefit they are claiming. The subsection is amended to change a reference to 'entitlement' to 'benefit' to ensure the correct terminology is used consistently.

Section 8 amends subsection 1.5.4.2 of the Principal Determination which provides that a person must repay to the Commonwealth the difference between their benefit and the amount they were paid. The subsection is amended to change a reference to 'entitlement' to 'benefit' to ensure the correct terminology is used consistently.

Section 14 amends paragraph 3.2.47G.6.b of the Principal Determination which provides the Director Navy People Career Management Agency may decide that subsections 3.2.47G.7 to 3.2.47G.9 apply to a member. The paragraph is amended to change the reference to 'Navy People Career Management Agency' to 'Navy Career Performance Support' to reflect the change of position titles resulting from the Navy People Branch restructure.

Section 15 omits and substitutes subsection 3.2.59.1 of the Principal Determination which sets out who section 3.2.59 applies to. The subsection is redrafted to change a reference to 'in' to 'on', and a reference to 'period' to 'provision', in order to correct 2 typographical errors.

Section 16 omits and substitutes subsection 3.5.66.5 of the Principal Determination which sets out the officers who may make a bonus offer under section 3.5.66. The subsection is redrafted to change the references to 'Navy People Career Management Agency' to 'Navy Career Performance Support' to reflect the change of these position titles resulting from the Navy People Branch restructure.

Section 17 omits Chapter 3 Part 5 Division 12 of the Principal Determination which provides bonus payments to members to encourage them to complete three years of service in certain Army ranks, corps and employment categories. The Division is removed as the bonus payments provided under the Division are no longer offered and all past bonus payments have been finalised.

Sections 19 and 20 amend subsections 5.4.34.2 and 5.4.34.3 of the Principal Determination which provide that the CDF may defer the expiration of a member's leave credit by an additional year at a time. Subsection 5.4.34.2 is amended to clarify that the deferral of the member's leave credit is to be approved for 1 additional year at a time, consistent with subsection 5.4.34.3. Subsection 5.4.34.3 is omitted, as the amendment made by section 1 makes the subsection redundant.

Section 21 omits and substitutes paragraph 5.5.15.2.a of the Principal Determination which provides that a previous period of service which was ceased due to illness can still be recognised even if there was a gap of more than twelve months between that period and their next period of service. The paragraph is redrafted to clearly state the CDF decision point and to reflect contemporary drafting standards.

Section 21A inserts a new paragraph 5.7.6.3.c into the Principal Determination which provides that additional paid parental leave must be taken within 14 weeks after the member gains a child through birth, adoption or a permanent care order.

Section 23 amends the heading to section 5.13.6 of the Principal Determination which provides when the CDF may pay a member costs for being recalled. The heading is amended to change a reference to 'where' to 'if a' to reflect contemporary drafting standards.

Section 24 amends the heading to section 5.13.7 of the Principal Determination which provides that a member may be reimbursed for certain costs if their leave is cancelled before it begins. The heading is amended to change a reference to 'where' to 'if a' to reflect contemporary drafting standards.

Section 25 omits and substitutes subsection 6.5.19.1 of the Principal Determination which provides that a member with dependants or a member with dependants unaccompanied may be provided assistance for a removal for their dependants to a personal location. The subsection is redrafted to clearly state the CDF decision point and to reflect contemporary drafting standards.

Section 26 amends subsection 6.5.22.1 of the Principal Determination which sets out the removal benefits a member may be eligible for when their dependants move from a personal location to the

member's posting location. The subsection is amended to change a reference to 'where both' to 'when all of' to reflect contemporary drafting standards.

Section 28 omits and substitutes section 6.5.64 of the Principal Determination which provides that a member is eligible for storage costs or the costs of removal to and from storage subject to the CDF's approval. The section is redrafted to clearly state the CDF decision point and to reflect contemporary drafting standards.

Section 29 omits and substitutes subsection 7.4.23.5 of the Principal Determination which provides that a member who has made a choice under paragraph 7.4.23.2.a must vacate the living in accommodation if the CDF is satisfied by certain conditions. Subsection 5 is redrafted to clearly state the CDF decision point and to reflect contemporary drafting standards. The amendment also adds subsection 6, which includes the content previously located in paragraph 7.4.23.5.b, as a consequence of amendments to subsection 5.

Section 33 omits the example in subsection 7.10.2.2 of the Principal Determination which provides that in areas where a utility is not available to the public the equivalent private supply is also taken to be a utility. The example is non-legislative and administrative in nature and is removed.

Section 35 omits section 8.3.5 of the Principal Determination which sets out circumstances where a member is not eligible to be categorised as a member with dependants (unaccompanied). The section is no longer required as the members who are excluded from being categorised as a member with dependants (unaccompanied) under this section are expressly excluded under the categorisation rules in section 8.3.6.

Section 36 omits and substitutes subsection 8.3.6.7 of the Principal Determination which provides that a member is eligible to be categorised as a member with dependants (unaccompanied) when they have not been provided removal benefits for their dependants to move to a personal location. The subsection is redrafted to provide that at least one of the dependants living in the home in the personal location must not be a child. The inclusion of this requirement brings subsection 8.3.6.7 into line with subsections 8.3.6.2 and 8.3.6.3.

Section 38 omits and substitutes subsection 8.4.7.1 of the Principal Determination which provides the CDF may approve assistance for a member not normally eligible or education assistance for circumstances that are beyond the member's control. The subsection is redrafted to reflect contemporary drafting standards.

Section 39 omits and substitutes section 8.4.11 of the Principal Determination which provides that a member may be eligible for reimbursement for the cost of a subscription to a web-based tutoring service. The section is redrafted to remove redundant text and to reflect contemporary drafting standards.

Section 42 amends the note in subsection 8.4.22.4 of the Principal Determination which provides the member is eligible for reimbursement for schools fees or accommodation costs if the member's child has stopped attending school for reasons beyond their control and the member cannot be refunded the costs by the school. The note is amended to change a reference to 'where the member' to 'to a member who' to reflect contemporary drafting standards.

Section 44 omits and substitutes section 8.4.24 of the Principal Determination which sets out who Chapter 8 Part 4 Division 5 applies to and when a member is eligible for special assistance under the Division. The section has been redrafted to bring it into line with contemporary drafting standards.

Section 63 omits and substitutes subsection 9.2.19.2 of the Principal Determination which provides that a member is eligible for certain payments for the duration of a delay under subsection 9.2.19.1 if the CDF is satisfied that it is reasonable. The subsection is redrafted to clearly state the CDF decision point, and to reflect contemporary drafting standards.

Section 64 and 65 amend the notes in subsection 9.2.19A of the Principal Determination which provides that if a member's recalculated allowance for rerouted travel is less than what the member has been paid, the member will be required to repay the difference. The subsections are amended to change the references to 'and' to 'are' to correct a typographical error.

Section 68 omits section 9.4.24 of the Principal Determination which sets out the structure of the Division. The section is non-legislative and administrative in nature and is removed.

Section 72 omits subsection 11.3.2.3 of the Principal Determination which sets out a table where related information about death and disability can be found. The subsection is non-legislative and administrative in nature and is removed.

Section 84 amends subsection 15.6.16.1.b of the Principal Determination which sets out one of the conditions for a member to be eligible to be reimbursed the mandatory fees for their child's summer camp. The section is amended to change the reference to 'Part 2' to 'Part 2A'. The existing reference is no longer current as a consequence of an amendment made by a previous Determination.

Section 85 inserts new section 15.6.17A into the Principal Determination. This section provides members who are on a long-term posting overseas a reimbursement for the cost of a mandatory COVID-19 test for each school age dependant each school term. This benefit is limited to one test per school term for each child.

Section 86 amends subsection 15.6.21.1 of the Principal Determination which provides for education assistance for a member on a long-term posting overseas in Cherbourg, France. The amendment omits the CDF and substitutes the Assistant Secretary People Policy and Employment Conditions as the decision maker under this subsection.

Section 89 omits and substitutes subsection 16.1.9.1 of the Principal Determination which provides that section 16.1.9 applies to decisions made under subparagraph 16.2.3A.c.ii. The subsection is amended to omit paragraph b. and to renumber the other paragraphs as the section paragraph b. refers to no longer exists as a consequence of an amendment made by a previous Determination.

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

#### Schedule 2—Salary and DFRT Allowance Definitions Amendments

Section 1 amends section 1.3.15 of the Principal Determination which provides the definition of 'Continuous full-time service'. The definition is being amended to remove reference to DFRT Determination No. 2 of 2017, *Salaries*. This information is not required as the definition for 'Salary' provided under section 1.3.69A refers to the DFRT Determination.

Section 2 omits and substitutes subsection 1.3.16.2 of the Principal Determination which provides the definition of the daily rate for an allowance determined by the Defence Force Remuneration Tribunal. The subsection has been amended to use the new definition of 'DFRT allowance' inserted by section 3 of this Schedule.

Section 3 inserts a new section 1.3.18B into the Principal Determination. This new section provides a new definition for 'DFRT allowance' which means any relevant allowance under section 58F of the Defence Act payable to a member on a fortnightly basis.

Section 4 amends section 1.3.69A of the Principal Determination which provides the definition of 'Salary'. The definition has been amended to provide that DFRT Determination No. 2 of 2017, *Salaries*, as in force from time to time.

Sections 5 and 6, 9, 12, 16, 19 and 52 amend various sections in the Principal Determination to replace the term 'salary related allowances' with 'DFRT allowances' which is a new defined term inserted by section 3 of this Schedule.

Sections 7, 10 and 11 and 13 to 15 amend sections 1.7.5, 1.7.6 and 1.7.7 of the Principal Determination to replace the term 'salary related allowances' with 'DFRT allowances and Language allowance'. These changes will ensure that all relevant allowances are taken into account under the sections.

Sections 17 and 18 amend section 2.3.5 of the Principal Determination which sets out the payment to be made to a member who ceases to be a member of the Permanent Forces due to termination or redundancy. The section is being amended to clarify that the benefit payable is comprised of a member's salary and specified allowances.

Sections 20 and 21 amend section 4.4.9 of the Principal Determination which provides the rates of ADF district allowance for members who live in hardship locations within Australia. The section is being amended to clarify that the rates of allowance provided under the section are annual rates.

Section 22 omits section 5.1.2A from the Principal Determination which provides the salary and allowances payable during leave. This section is non-legislative in nature as the rules are provided in the relevant leave provisions.

Sections 23 and 24 amend section 5.4.36 of the Principal Determination which provides the salary payable during a period of recreation leave. The section is being amended to provide the rate of salary that a member is eligible for during a period of recreation leave if they were directed to act at a higher rank under the *Defence Regulation 2016* (the Defence Regulation).

Sections 25 to 27 amend section 5.4.37 of the Principal Determination which provides the allowances payable during a period of recreation leave.

- Section 25 substitutes subsection 5.4.37.1 to clarify the allowances that are payable to a member during a period of recreation leave.
- Section 26 substitutes paragraph 5.4.37.2.d to provide that a member whose service is being terminated under section 24(1)(a) of the Defence Regulation due to being medically unfit for service in the ADF is eligible for the payment of allowances during recreation leave.
- Section 27 omits paragraph 5.4.37.2.e as it is no longer required due to the change made by section 26 of this Schedule.

Section 28 omits and substitutes section 5.4.42 of the Principal Determination which provides definitions for terms used in Chapter 5 Part 4 Division 8, Payment or transfer of recreation leave credit. The section has been redrafted to reflect contemporary drafting standards.

Section 29 amends section 5.4.44 of the Principal Determination which provides the amount payable to a member when they elect to receive a payment for recreation leave credits they have accrued when they leave service with the ADF. Subsection 5.4.44.2 has been amended to clarify the amount of salary and annual allowances that a member may receive for each day of accrued or purchased leave credit. A new subsection 5.4.44.3 has been added to provide a calculation for the member's daily rate of salary used in the calculation under subsection 5.4.44.2.

Sections 30 and 31 amend section 5.4.44A of the Principal Determination which provides the amount payable for recreation leave credits to a senior officer who has transitioned from the Permanent Forces to the Reserves. Subsection 5.4.44A.2 has been amended to clarify the calculation of the amount payable to the member. Subsection 5.4.44A.3 has been omitted as the rule has been included under subsection 5.4.44A.2.

Section 32 amends section 5.4.45 of the Principal Determination which provides for the transfer of recreation leave credits and payment to a Commonwealth entity when a member leaves service with the ADF and is employed by the Commonwealth entity. Subsection 5.4.45.2 has been amended to clarify the amount of salary for each accrued leave credit the Commonwealth entity is to be paid. A new subsection 5.4.45.2A has been added to provide the calculation of the daily rate of salary for the purpose of subsection 5.4.45.2.

Section 33 omits section 5.4.46 of the Principal Determination which provides the calculation of payment or transfer rates of recreation allowance. This section is no longer required due to the changes made by sections 25, 28 and 29 of this Schedule.

Section 34 amends the title Chapter 5 Part 5 Division 4 of the Principal Determination to better reflect the content of the Division.

Section 35 omits and substitutes section 5.5.21 of the Principal Determination which provides the salary payable to a member during long service leave. The section has been amended to include the rate of salary payable to a member on long service leave if they were directed to act at a higher rank under the Defence Regulation.

Section 36 omits section 5.5.22 of the Principal Determination which provides the rate of salary payable to a member on temporary or acting rank during long service leave. This rule has been included under section 5.5.21 and this section is no longer required.

Section 37 omits and substitutes section 5.5.23 of the Principal Determination which provides the DFRT allowances that are payable to a member during long service leave. The section has been amended to

clarify the allowances that are payable to a member during a period of recreation leave. Subsection 5.5.23.2 has been amended to clarify that a member whose service is being terminated under section 24(1)(a) of the Defence Regulation due to being medically unfit for service in the ADF is eligible for the payment of allowances during long service leave.

Sections 38 to 40 amend section 5.5.26 of the Principal Determination which provides the salary payable for long service leave for a member who is paid for their long service leave credits.

- Section 38 amends subsection 5.5.26.4 is being amended to remove a reference to section 5.5.22 which has been omitted by section 35 of this Schedule.
- Section 39 amends paragraph 5.5.26.4.a to clarify the applicable rate of salary payable to the member for their long service leave credits.
- Section 40 omits a related information note which is non-legislative in nature.

Section 41 omits and substitutes section 5.6.4 of the Principal Determination which provides the definitions for Chapter 5 Part 6, Maternity leave. This section has been amended to remove the definition of 'Salary' which has been included in section 5.6.14 by section 42 of this Schedule. The section has also been redrafted to reflect contemporary drafting standards.

Section 42 omits and substitutes section 5.6.14 of the Principal Determination which provides that a member is eligible for salary for the first 14 weeks of maternity leave. The section has been amended to clarify that the member who has completed their qualifying service is eligible for salary and allowances that would be payable if the member was on recreation leave. If a member completes their qualifying service during maternity leave, they are eligible for salary and allowances for the remaining period of the 14 weeks maternity leave. Information which is non-legislative in nature has been removed from the section.

Section 43 omits and substitutes section 5.6.15 of the Principal Determination which provides the salary payable to a member who takes maternity leave at half pay. The section has been amended to clarify the effects on a member's pay and leave when they elect to take their maternity leave at half pay. Information which is non-legislative in nature has been removed from the section.

Section 44 amends subsection 5.6.31.2 of the Principal Determination which provides the conditions that apply to the payment of salary for a member who was on leave without pay when they commence maternity leave. The subsection is being amended to include allowances as one of the benefits which may be affected by the conditions.

Section 45 omits section 5.8.8 of the Principal Determination which provides the salary and allowances payable during war service leave. This section is non-legislative in nature as the rules are provided in the relevant leave provisions.

Sections 46 and 47 amend section 5.8.9 of the Principal Determination which sets out the payment of war service credits instead of taking the leave. Subsection 5.8.9.2 is being amended to clarify that the member is eligible for payment of salary and allowances which would have been payable if the member had taken the leave. The subsection has also been redrafted to reflect contemporary drafting standards. Subsection 5.8.9.3 has been omitted as the rule has been included in subsection 5.8.9.2.

Sections 48, 50 and 51 amend Chapter 7 Part 10 of the Principal Determination which sets out utilities provisions for members in Defence subsidised housing. The sections insert Division titles into the Part to split the rules into defined subjects.

Section 49 omits section 7.10.1 from the Principal Determination which provides the purpose of Chapter 7 Part 10. This section is information only and is non-legislative in nature.

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

### Schedule 3—Navy Non-reduction provisions amendments

Section 1 amends the table in Part 1 of Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) for members with the rank of Warrant Officer Class 1(E) or lower, together with the start dates and end dates for salary non-reduction

periods. The table is amended to provide a 5 year salary non-reduction period for Navy 'Communication and Information Systems — Communication Grade 5 Tier A'. The retrospective application of this section 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.

Section 2 amends the table in Part 2 of Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) for members with the rank of Warrant Officer Class 2 (E) or lower together with the commencement and expiry dates of the salary non-reduction period. The table is amended to provide a 5 year salary non-reduction period for Navy 'Communication and Information Systems — Communication Grade 4', 'Communication and Information Systems — Communication Grade 5', 'Communication and Information Systems — Information Grade 4' and 'Communication and Information Systems — Information Grade 5'. The retrospective application of this section 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.

#### Schedule 4—Overseas conditions of service miscellaneous amendments

Any section not listed for this Schedule omit examples, non-examples, notes, see notes, related information, relevant information and authorities from the Principal Determination. This information is non-legislative in nature and does not need to be determined.

Section 1 is an application provision which sets out terms that are used in the Schedule.

Sections 2, 205 and 206 omit Chapter 12 Part 2, Chapter 17 Part 5 and Chapter 17 Part 6, respectively, from the Principal Determination. These Parts are placeholders for information that is non-legislative in nature and do not need to be determined.

Section 7 omits and substitutes paragraph 12.3.5.1.c of the Principal Determination which provides that a person who has been recognised as a dependant with special needs under is a dependant for overseas conditions of service purposes. This paragraph has been amended to refer to section 1.3.84 as the provision where a person is recognised as a dependant with special needs. The see note has been removed as it is non-legislative in nature.

Section 12 omits and substitutes section 12.3.12 of the Principal Determination which provides the definition of "Ordinary posting period". The section has been amended to omit an exception and write it into the rule.

Section 13 omits and substitutes subsection 12.3.14A.3 of the Principal Determination which provides the post index location which applies to the member's posting location. The subsection has been amended to omit the 2 notes and write them into rules at the new paragraph 12.3.14A.3.e and subsection 12.3.14A.4.

Section 15 omits Annex 12.3.A from the Principal Determination which provides a map of international time zones. This Annex has been removed as it is non-legislative in nature.

Section 17 omits and substitutes subsection 12.6.6.2 of the Principal Determination which provides that a member is eligible for travel costs on return to Australia. The subsection is being amended to write the relevant references to the travel costs which were provided in the note into the rule.

Sections 18, 26, 41, 44, 48, 78, 102, 104, 166, 188 and 207 omit a number of sections from the Principal Determination which provide overviews of Chapters and Parts. These overviews are non-legislative in nature and do not need to be determined.

Section 19 omits and substitutes the title of Chapter 13 Part 1 of the Principal Determination to better reflect the content of the Part.

Section 20 omits and substitutes section 13.1.1 of the Principal Determination which provides the purpose statement of Chapter 13 Part 1. The section has been amended to better reflect the purpose of the Part.

Section 25 inserts a new section 13.1.5 into the Principal Determination. The new section provides the definition of "Travel time" which is used in Chapter 13 Part 1. This term was previously defined in section 13.2.2 which has been omitted by section 27 of this Schedule. The term of "Time zone hour" has not been re-determined under section 13.1.5 as it is defined at section 12.3.19.



Section 27 omits section 13.2.2 from the Principal Determination which provides definitions used in Chapter 13 Part 2. This section has been remade in section 13.1.5 by section 25 of this Schedule.

Section 34 omits and substitutes paragraph 13.2.11.8.b of the Principal Determination which provides that a member is eligible for meal and incidentals during an overnight rest period. This paragraph is being amended to provide a more direct policy reference to Annex 13.3.A where the meal and incidental costs are the daily limits are provided. The amendment also removes the see note which is non-legislative in nature and does not need to be determined.

Sections 39 and 40 amend Parts 1 and 2 of Annex 13.3.A of the Principal Determination which provides the maximum travel costs payable for travel overseas. Table item 2 of each part is being amended to omit the see notes and replace them with legislative notes that provide that travel costs are provided under Chapter 9 Part 5 when a member travels from an overseas location to Australia on short-term duty.

Section 45 omits and substitutes the title of Chapter 14 Part 1 of the Principal Determination to better reflect the content of the Part.

Section 49 omits and substitutes section 14.2.3 of the Principal Determination which provides the member to whom Chapter 14 Part 2 Division 1 applies. The section has been amended to better reflect that the Division applies to a member's dependants who have been approved to travel to a long-term posting location overseas.

Section 56 amends subsection 14.3.7.1 of the Principal Determination which provides that items not removed to an overseas location can be stored in Australia. This subsection is being amended to remove reference to the storage being at 'Commonwealth expense' and to reference where the storage provisions are in Chapter 6 Part 5 Division 2.

Section 61 amends the title of Chapter 14 Part 3 Division 2 of the Principal Determination to better reflect the content of the Part.

Section 68 omits and substitutes subsection 14.3.26.2 of the Principal Determination which provides that when a member and their dependants return to Australia at the end of a long-term posting overseas the removal provisions in Australia apply. The subsection is being amended to specify that the removal provisions in Australia are provided under Chapter 6 Part 5.

Section 69 omits and substitutes subsection 14.4.10.1 of the Principal Determination which provides the amount of excess baggage a member and each dependant can transport at no additional cost to the member when travelling to or from an overseas posting location. This subsection is being amended to remove the exception and to write it into the rule.

Section 82 amends subsection 14.6.8.1 of the Principal Determination which provides the provisions which apply to a member if they are evacuated from an overseas posting location. The subsection has been amended to specify that the rules that apply are those under Chapter 15.

Section 84 omits and substitutes subsection 14.6.8.2 of the Principal Determination which provides the conditions that apply during an evacuation from an overseas posting location. The subsection has been amended to specify that the member must continue to pay the rent and utilities contributions during the evacuation period. The payment of overseas living allowance which is currently provided under the subsection is provided for under section 14.6.9 and is not required.

Section 86 omits and substitutes section 14.6.12 of the Principal Determination which provides the health assistance a member and their dependants are eligible for during an evacuation from an overseas posting location. This section has been amended to clarify that the assistance is for medical, dental and hospital costs incurred at an overseas evacuation centre and the costs payable provided under Chapter 15 Part 5.

Sections 89 and 90 omit sections 14.6.15 and 14.6.16 from the Principal Determination. These sections are information only, they provide references to where the rules are provided under the Principal Determination and the sections do not need to be determined.

Section 94 amends the note in section 14.6.20 of the Principal Determination which provides that compensation for the loss or damage to clothing or effects used for service is not provided under Chapter 14 Part 6. The note has been amended to provide that compensation is provided under Chapter 10 Part 4.

Section 101 omits Chapter 14A Part 3 from the Principal Determination which provides special provisions for people who were evacuated from China between 29 January 2020 and 10 February 2020 due to COVID-19. This period has now passed and is no longer required.

Section 103 omits and substitutes the title of Chapter 15 Part 1 of the Principal Determination to better reflect the content of the Part.

Section 124 amends subsection 15.3.15A.3 of the Principal Determination which provides the travel costs for an escort when a child is travelling to the Marshall Islands on a reunion visit. The subsection is being amended to insert a new subsection 15.3.15A.3A which provides that a member is eligible for accommodation costs in Hawaii if they arrive in the location before the child due to the availability of flights. This new rule is currently in a note provided in subsection 15.3.15A.3 which is being removed by this section.

Section 131 amends subsection 15.3.33.2 of the Principal Determination which provides that a close relative is eligible for travel costs to visit a person who has a serious or very serious illness. The subsection has been amended to insert a new subsection 15.3.33.2A which provides that only one close relative is eligible for travel costs under the section, this new rule is currently in a note provided in subsection 15.3.33.2 which is being removed by this section.

Section 132 amends subsection 15.3.34.2 of the Principal Determination which provides that a close relative is eligible for travel costs to attend a funeral or to make necessary arrangements following the death of a member or their partner overseas. The subsection has been amended to insert a new subsection 15.3.34.2A which provides that only one close relative is eligible for the travel costs under the section, this new rule is currently in a note provided in subsection 15.3.34.2 which is being removed by this section.

Section 134 amends paragraph 15.3.38.2.b of the Principal Determination which provides that a member must be on a period of leave to be eligible for additional travel when the member's long-term posting overseas has been extended. The note in the paragraph is being amended to clarify that the rule under paragraph 15.3.38.2.b does not apply to travel taken by a member's dependants.

Section 158 omits and substitutes subsection 15.5.11.2 of the Principal Determination which provides the ancillary medical costs that may be reimbursed to a member. This subsection has been redrafted to provide that an ancillary service is one that is an additional service not covered by Medicare but is one covered under Medibank Private Extras in Australia. A table of examples of ancillary costs has been removed as it is not legislative in nature.

Section 165 omits and substitutes subsection 15.9.5.2 of the Principal Determination which provides that a member is eligible for a reimbursement for loss on sale of a member's motor vehicle or towable item that is stored in Australia. The subsection is being amended to clarify that the reimbursement is to be no more than AUD 1,400. This limitation is currently in a note under the subsection but it has been included in the rule to avoid doubt that the limitation applies.

Section 172 omits paragraph 16.1.9.b from the Principal Determination which provided that section 16.1.9 applied to a decision made under subparagraph 16.2.3A.c.ii. Section 16.2.3A has been omitted from the Principal Determination and this reference is no longer required.

Section 177 omits section 16.4.4 from the Principal Determination which provides that Chapter 16 Part 4 does not apply to a member on short-term duty overseas. Section 16.4.3 provides who the Part applies to and the information provided in section 16.4.4 is not required.

Section 181 omits and substitutes subsection 16.4.8.1 of the Principal Determination which provides that the section applies to a member whose long-term posting overseas is extended beyond the ordinary posting period. The subsection is being amended to provide that the ordinary posting period is set out in Annex 16.B. This information is currently in a related information note which is being removed.

Section 182 omits and substitutes the note in paragraph 16.4.11.2.c of the Principal Determination which provides that the restricted destinations under section 1.3.68 must be taken into consideration when approving assisted leave travel. This note has been amended to also refer decision makers to consider section 5.2.6 when making the decision.

Section 184 omits section 16.4.13 from the Principal Determination which provides examples of how assisted leave travel may be used. This information is non-legislative in nature and does not need to be determined.

Section 185 omits and substitutes paragraph 16.4.15.2.a of the Principal Determination which provides the rate of vehicle allowance payable for travel by private vehicle when a member goes on assisted leave travel. The paragraph is being amended to include a reference to the rate of vehicle allowance payable if the vehicle was being used on official business.

Section 189 omits and substitutes the title of Chapter 17 Part 1 of the Principal Determination to better reflect the content of the Part.

Section 195 omits section 17.4.1 from the Principal Determination which provides the principle of Chapter 17 Part 4. This section is being omitted as the information is non-legislative in nature and does not need to be determined.

Section 203 omits section 17.4.9 from the Principal Determination which provides a list of assistance which is provided under Chapter 17 Part 4. This section is being omitted as the information is non-legislative in nature and does not need to be determined.

Section 218 amends subsection 17.7.20.1 of the Principal Determination which provides that a member does not accrue extra recreation leave credit when they accrue leave under Chapter 17 Part 7 Division 3. The subsection has been amended to specify that extra recreation leave is provided under Chapter 5 Part 4 Division 4 of the Principal Determination.

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

#### Schedule 5—Transitional provisions

Section 1 provides a transitional provision for members who were required to pay for COVID-19 testing for their school-age dependant between 1 January 2021 and the commencement of Schedule 1 of this Determination.

Section 2 provides that the member is eligible to be reimbursed the cost of one COVID-19 test each school term if the school made a COVID-19 test a mandatory requirement for the school-age dependant to attend the school.

#### **Consultation**

Schedules 1, 3 and 5 – Consultation was undertaken with the Army, Navy and Air Force during the development of the amendments relating to the provision of benefits. The rule maker was satisfied that further consultation was not required for the remaining amendments in Schedule 1 as they are technical in nature.

Schedules 2 and 4 – The rule maker was satisfied that the changes made by this Schedule are technical in nature and 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*

## ***Defence Determination, Conditions of service Amendment Determination 2021 (No. 7)***

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.

- To make technical amendments which include, updating out of date references and remove information that is non-legislative in nature, to more clearly express the CDF decision points within some sections, changing the name of Defence Community Organisation to Defence Member and Family Support as a consequence of organisational change, substituting the Assistant Secretary People Policy and Conditions for the CDF as the decision maker for approving a child who is a dependant to attend St John's College, Southsea, England or Ermitage International School of France, Maison-Laffite, France in year 9 and below at Commonwealth expense in exception circumstances, and redrafting some sections to correct grammatical and typographical errors and to bring them into line with contemporary drafting standards.
- To extend the limitations on being able to be categorised as a member with dependants (unaccompanied) categorisation under subsection 8.3.6.7 if the categorisation would result in the member's dependants who are children being left unaccompanied by an adult.
- To enable members on long-term posting overseas to be reimbursed for the cost of one COVID-19 test for each school aged dependant per school term. The reimbursement is only to be provided if the school has made the test a mandatory requirement in order for the child to attend the school.
- To define the term of 'DFRT allowance' to provide a single term used in the Principal Determination when an allowance determined by the DFRT is referenced, and to make consequential amendments to reflect this change.
- To provide a salary non-reduction period of 5 years for Navy personnel in employment categories of Communication and Information Systems — Communication Grades 4 and 5, and Communication and Information Systems — Information Grades 4 and 5. This will preserve the salary of members who do not currently meet the new prerequisites for the skill grade while the member completes the prescribed service and training requirements to advance to a higher pay grade in the new Communications and Information System structure.

### **Human rights implications**

#### *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.

#### *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.

Schedule 1 advances human rights by ensuring adequate living conditions for a member's children. The amendment to subsection 8.3.6.7 ensures the subsection does not provide a financial incentive for members to leave their child dependants in a location where they are unaccompanied by an adult.

Schedule 1 also advances the right to the enjoyment of just and favourable conditions of work providing additional assistance to members as a part of their conditions of service to cover additional costs arising as a consequence of their posting to an overseas location.

Schedules 1 and 5 promote the right to just and favourable conditions of work by providing members who are accompanied by school age children overseas with a reimbursement for the cost of one COVID-19 test per child, each school term.

Schedule 3 promotes the right to just and favourable conditions of work by providing a 5 year salary non-reduction period for Navy personnel in the employment categories of Communication and Information Systems – Communication Grade 4 and 5, and Communication and Information Systems – Information Grade 4 and 5. This will preserve the salary of members who do not currently meet the prerequisites to advance to a higher pay grade in the new Communications and Information System structure.

The remaining parts to this Determination make are compatible with human rights because they do not engage any applicable human rights or freedoms as the amendments are technical in nature.

### **Conclusion**

This Determination is compatible with human rights because, to the extent that it engages with human rights, it advances their protection.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions