

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination 2020 (No. 15)

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.

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 15 sets out provisions dealing with living and working on long-term posting overseas.

The purpose of this Determination is to:

- Correct the employment category names and the period for salary non-reduction for members of the Air Force who are transferred to a Network Technician employment category and to remove associated rules that are no longer required.
- Establish ABC International School, Tokyo as an approved summer school for members who are posted to Japan.

The retrospective application of this Determination 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 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this instrument commences on 6 August 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Salary non-reduction amendments

Section 1 omits paragraph 3.2.50 of the Principal Determination which provides for members who the Division applies to. Paragraph 3.2.50.f has been omitted as this provision is no longer required already being provided for in DFRT No. 2 of 2017, *Salaries*.

Section 2 omits the note from paragraph 3.2.51 of the Principal Determination which identifies members who the Division applies to. The note in paragraph b directed the reader to paragraph 3.2.50.f which is being omitted by section 1 of this Determination, which has been removed as a consequence of this Determination.

Section 3 omits and substitutes Annex 3.2.B of the Principal Determination which provides salary non-reduction for members with the rank of Warrant Officer Class 1 or lower. Salary non-reduction provisions are available to eligible members who are transferred by their Service from a Communications and Information Systems Controller employment category to the Network Technician employment category between 25 June 2020 and 24 June 2025. Members who are transferred to the Network Technician employment category will have a five year salary non-reduction provision from the date of their transfer. All other salary non-reduction provisions remain the same.

Other amendments have been made to promote consistency in drafting without amending the outcome of the rules.

### Schedule 2—Approved summer schools — Japan amendments

Section 1 amends the table in Annex 15.6.B of the Principal Determination which specifies the approved summer schools for Tokyo, Japan. A new summer school 'ABC International School, Tokyo' is inserted into item 9 of the table as an approved summer school. The school is added to the list of approved summer schools so that children do not have to change schools during the summer program period.

### Schedule 3—Transitional Provision

Section 1 provides a transitional provision that applies the amendment in Schedule 1 to members with any dependent children who were enrolled in the ABC International School for the summer school program between 9 July 2020 and the commencement of this Determination.

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**

The Defence Force Remuneration Tribunal and Air Force were consulted in the making of Schedule 1 of this Determination.

Navy, Army, Air Force, the Directorate of Attaché and Overseas Management were consulted in the development of the changes in Schedules 2 and 3 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*

*Defence Determination, Conditions of service Amendment Determination 2020 (No. 15)*

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:

- Correct the employment category names and the period for salary non-reduction for members of the Air Force who are transferred to a Network Technician employment category and to remove associated rules that are no longer required. .
- Establish ABC International School, Tokyo as an approved summer school for members who are posted to Japan

## 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 education*

Article 13 of the International Covenant on Economic, Social and Cultural Rights recognises the right of everyone to education. The protection of a child's right to education engages Article 28 of the Convention on the Rights of the Child. Article 28 recognises the right of a child to education.

Schedule 1 advances the specific rights in articles 7(a) and 7(c) of the International Covenant on Economic, Social and Cultural Rights. It ensures that members of the Air Force who were in the Communications and Information Systems Controller employment category, or the Communications Electronic employment category and have transferred to the Network Technician employment category maintain their level of remuneration based on their qualifications and skills while undergoing re-categorisation.

Schedules 2 and 3 advance the rights under Articles 10 and 13 of the International Covenant on Economic, Social and Cultural Rights by ensuring the summer schools in Japan remain contemporary and appropriate for the periods of service a member may have a child attending school in Japan.

## Conclusion

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

Fiona Louise McSpeakerin, Assistant Secretary People Policy and Employment Conditions