###### Defence Determination, Conditions of service Amendment Determination 2020 (No. 20)

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 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 5 sets out provisions dealing with leave.
* Chapter 6 sets out provisions dealing with relocations on posting in Australia.
* Chapter 7 sets out provisions dealing with housing and meals.
* Chapter 8 sets out provisions dealing with members of the ADF and their dependants.
* Chapter 9 sets out provisions dealing with travel costs in Australia.
* Chapter 12 sets out provisions dealing with overseas conditions of service.
* Chapter 14 sets out provisions dealing with relocating to or from long-term posting overseas.
* 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:

* Make technical amendments that update out of date references and to redraft some sections to bring them into line with contemporary drafting standards. This Schedule also sets the Christmas stand-down periods for 2020-2021, 2021-2022 and 2022-2023 and access to leave immediately before and after the Christmas stand-down dates, and extends access to the Puckapunyal Housing trial for a further 3 years to collect more data to better understand the viability of that type of housing option.
* Remove rules, and make consequential amendments, relating to overseas conditions of service that applied to members who were posted on a long-term posting overseas before 1 July 2017, as the benefits ceased to have effect on 30 June 2020. This is in response to conditions being provided as a part of the 2016 Australian Government Review of entitlement, additional allowances and financial support provided to Australian Government employees stationed overseas (‘the Review’). The review allowed for a 3-year transitional period for members posted on long-term postings overseas prior to 1 July 2017. Members were first advised in 2017 that they would be transferred to the new conditions as a part of the implementation of the outcomes of the Review
* Provide a salary non-reduction period of 5 years for members in the Maritime Logistics Personnel Operations – Grade 2 employment category. This extension is necessary due to the disruption of Navy training schedules by COVID-19, which has prevented members from completing their prerequisite training as agreed by the Defence Force Remuneration Tribunal in Matter 11 of 2017.
* Amend the provisions for Reserve capability payment for members of the Reserves who provide capability at short notice and are assigned as Service Category 4 by their service. The amendments provide more flexibility for a member by making the provisions less restrictive.
* Make technical amendments to provisions relating to benchmark schools by amending references and removing text that is administrative in nature.
* Remove the entry for Operation FORTITUDE as the operation ceased on 31 July 2020.

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

Section 2 provides that this instrument commences on 1 October 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—Miscellaneous amendments*

Sections 1 and 2 omit subsections 1.6.1.4 and 1.6.1.5 from the Principal Determination which provide references to sections within the Principal Determination that deal with circumstances when two members who are partners are both eligible for the same or similar benefits and a member's adult dependant is also a member. The subsections are non-legislative and administrative in nature.

Section 3 omits and substitutes subsection 3.2.7.2 of the Principal Determination which provides the formula for determining the daily rate of salary and allowances and table that references the sections within the Principal Determination to which the formula is to apply. The subsection is remade without the table of references as the formula is universally applied throughout the Principal Determination unless otherwise specified.

Section 4 omits and substitutes subsection 3.2.7A.4 of the Principal Determination which set out the administration of salary and allowances for members on a flexible service determination. The subsection is remade to update the references and to bring the subsection into line with contemporary drafting standards.

Section 5 omits and substitutes the table in section 3.2.49 of the Principal Determination which sets out the definitions for salary non-reduction provisions. The amendment omits a redundant reference to subsection 3.2.52.3 which was removed by a previous amendment.

Sections 6 and 12 omit see notes from paragraph 3.6.5.2.j (deliberately differentiated offer for members – considerations before an offer is made) and subsection 6.5.28.1 (posting or deployments – removal of gap year members) of the Principal Determination. The see notes are non-legislative and administrative in nature and are removed.

Section 7 omits and substitutes section 4.4.6 of the Principal Determination which sets out when a member is not eligible for ADF district allowance under Division 6. The amendment omits the see note and incorporates it into the section to bring the section into line with contemporary drafting standards.

Section 8 amends paragraph 5.3.2.c of the Principal Determination which sets out medical absence from duty. The amendment removes a reference to subsection 5.3.8 which was removed in by previous amendments.

Section 9 omits section 5.10.1 of the Principal Determination which sets out the purpose of the Part. The section is omitted as it duplicates section 5.10.3.

Section 10 omits the heading of Chapter 5 Part 10 Division 1 (Leave without pay) of the Principal Determination. There is only one Division in the Part so the Division heading does not serve any purpose.

Section 11 omits and substitutes paragraph 5.10.4.3.h of the Principal Determination which sets out the criteria the CDF must consider before granting leave without pay. The amendment removes an out of date reference to a policy document.

Section 13 Omits Chapter 7 Part 1 Division 2 of the Principal Determination which provides reference information only. The Division is removed as it relates to sections previously omitted from the Principal Determination.

Section 14 amends subsection 7.1.16A.3 of the Principal Determination which sets out the conditions for members participating in the Puckapunyal housing trial. The amendment inserts a new end date of 31 December 2023 for the trial.

Section 15 omits section 8.3.1 of the Principal Determination which sets out the purpose of the Part. The section is omitted as it duplicates section 8.3.3.

Section 16 omits Chapter 9 Part 2 Division 1 of the Principal Determination which provides a travel benefit for ADF entry applicants. These sections had previously been remade in Chapter 2 of the Principal Determination. This amendment is consequential to that change, removing remaining sections that no longer provide a purpose.

Section 17 omits section 9.6.2 of the Principal Determination which describes the basis for receiving vehicle allowance. The amendment omits the section because it contains non-legislative guidance only which does not need to be determined.

Section 18 amends section 15.1.5 of the Principal Determination which establishes the Christmas stand-down period and related rules for members on a long-term posting overseas. This amendment clarifies that the days within the Christmas stand-down period are taken as a non-discretionary short absence that do not require preapproval. However, a member may be required to work on a day during the Christmas stand-down period. These members will be eligible for a day of short absence on another day, and are not precluded from taking another type of leave before or after a day of short absence during the Christmas stand-down.

Section 19 amends section 15.4.6 from the Principal Determination which sets out the housing benefits that members are eligible for. The amendment removes the rules relating to the payment of rent and utilities contribution which are contained in section 15.4.5A, and adds a provision clarifying how the payment may be reimbursed to reflect current rental arrangements. The amendment also inserts a note advising that the member may be required to pay a contribution toward the cost of utilities and contemporises the drafting style.

Section 20 omits and substitutes section 15.4.15 of the Principal Determination which relates to the reimbursement of utilities costs. The amendment inserts a note advising that the member may be required to pay a contribution toward the cost of utilities and contemporises the drafting style.

Section 21 omits Chapter 15 Part 4 Division 3 of the Principal Determination which contains only one section that provided the definition of a rent group. The definition is remade in section 15.4.17A of the Principal Determination by section 22 of this Schedule.

Section 22 inserts section 15.4.17A into the Principal Determination. The new section defines rent group for the purpose of Chapter 15 Part 4 Division 4.

Section 23 omits and substitutes section 15.4.18 of the Principal Determination, as well as adding section 15.4.18A. Section 15.4.18 requires a member to pay a contribution towards rent and utilities for rental accommodation at an overseas posting location. The rate of the contribution is set in Annex 15.4.B. The section has been redrafted into two separate sections for clarity; section 15.4.18 for rent and section 15.4.18A for utilities. References to Annex 15.4.B are also updated. Rules relating to the reduction of rent and utilities contributions are remade in section 15.4.22A of the Principal Determination by section 24 of this Schedule.

Section 24 inserts section 15.4.22A into the Principal Determination. The new section contains rules about the reduction in rent and utilities contributions to be paid by a member. These rules were previously located in subsection 15.4.18.4.

Section 25 omits and substitutes section 15.4.23 of the Principal Determination which contains information about maintaining a household in Australia. The section was amended to update the references and to bring the subsection into line with contemporary drafting standards.

Section 26 omits and substitutes Annex 15.4.A of the Principal Determination which provides a member’s rent group. The Annex is redrafted in line with contemporary drafting standards. The ranks of Warrant Officer of the Navy, Regimental Sergeant Major of the Army and Warrant Officer of the Air Force are also included in table item 7 of the Annex. Under the Defence (Personnel) Regulations 2002, these ranks were included in the rank of Warrant Officer class 1; they are now listed separately in the Defence Act. This amendment is consequential to that change.

Section 27 omits and substitutes Annex 15.4.B of the Principal Determination which provides the member’s contribution towards rent and utilities for rental accommodation at an overseas posting location. Annex 15.4.B was divided into two Parts on the basis of a member being accompanied or unaccompanied. Annex 15.4.B is now divided into rent and utilities contributions.

*Schedule 2—Overseas conditions of service amendment*

Sections 1 omits and substitutes the table in subsection 3.2.7A.2 of the Principal Determination which provides that salary and allowances may be claimed by members on a flexible service determination. The table set out the location within the Principal Determination of different allowances that may be claimed under section 3.2.7A. The table was omitted and substituted to update the references it provided to other provisions in the Principal Determination. The items in the table were also renumbered.

Sections 2 and 3 amend subsection 3.7.2.2 of the Principal Determination which provides that members posted overseas may continue to receive benefits. The table in subsection 3.7.2.2 outlines circumstances in which such benefits could continue to be claimed. Section 2 omits and substitutes the table to update the references it provided to other provisions in the Principal Determination. The items in the table were also renumbered. Section 3 omits the see note from subsection 3.7.2.2 which directed the reader to sections 12.3.9A and 12.3.9B, this note is not legislative in nature.

Section 4 omits and substitutes paragraph a of the note in subsection 5.4.17.1 of the Principal Determination which outlines the provisions that authorise additional recreation leave credit for service at overseas hardship locations. The paragraph was omitted and substituted to update the references it provided to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 5 amends the see note from paragraph 5.8.6.2.b of the Principal Determination which directed the reader to Chapter 16 Part 3. Chapter 16 Part 3 has been removed as a consequence of this Schedule. The note has been amended to provide the current reference to Chapter 16 Part 3A.

Sections 6 and 7 omit sections 12.3.9A and 12.3.9B of the Principal Determination which defined a member posted before, on or after 1 July 2017. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence these provisions are no longer required.

Section 8 amends the exception in section 12.3.12 of the Principal Determination which directs the reader to an exception to the ordinary posting period in Annexes 16.A and 16.B. The exception was amended to update the references it provided to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 9 omits the see note from subsection 14.2.7.4 of the Principal Determination which provides that only the member receiving overseas living allowance is eligible for an outlay advance. The note in subsection 4 directs the reader to look under either Chapter 15 Part 2 or Part 2A to find the appropriate overseas living allowance. This note has been omitted as it is not legislative in nature.

Section 10 omits section 14.2.10 of the Principal Determination which outlines circumstances in which a member posted before 1 July 2017 may be eligible for a reimbursement for financial advice. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence this section is no longer required.

Section 11 omits paragraph 14.2.11.3.d of the Principal Determination which refer to a reimbursement that a member posted before 1 July 2017 could claim for the loss on the sale of a vehicle for a member. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence the paragraph is no longer required.

Section 12 amends Chapter 14 Part 3 Division 2 of the Principal Determination which provides for the loss on the sale or storage of private vehicles for a member posted overseas. This section amends the heading of the Division to remove the reference to sale of private vehicles which is no longer required. The provision relating to the sale of private vehicles has been omitted by section 13 of this Schedule.

Section 13 omits section 14.3.14 of the Principal Determination which provides a reimbursement that a member posted before 1 July 2017 could claim for the loss on the sale of a vehicle for a member. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence the section is no longer required.

Section 14 omits the see note in subsection 14.5.3.1 of the Principal Determination which directs the reader to look under either Chapter 15 Part 2 or Part 2A to find the appropriate overseas living allowance. This note has been omitted as it is not legislative in nature.

Section 15 omits and substitutes section 14.6.9 of the Principal Determination which provides that members who are evacuated can claim an overseas living allowance that they would otherwise have been eligible for during the period of evacuation. The section has been omitted and substituted to update the references it provided to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Sections 16, 17 and 18 omit and substitute section 14A.1.16, section 14A.1.17 and subsection 14A.1.17A.1 of the Principal Determination. These provisions provide benefits to members in respect of overseas living allowances, hardship and location allowances. These provisions have been omitted and substituted to update the references they provide to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 19 omits and substitutes subsection 14A.1.17A.2 of the Principal Determination which provides for when additional recreation leave for hardship locations does not accrue. The paragraph has been omitted and substituted to update the references it provides to other allowances in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 20 omits and substitutes paragraph 14A.1.22.1.b of the Principal Determination which refers to provisions under which the member is receiving the accompanied rate of overseas allowances. The paragraph was omitted and substituted to update the references to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 21 omits Chapter 15 Part 2 of the Principal Determination. The Part provides overseas living allowances for members posted overseas before 1 July 2017 were eligible for. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence these provisions are no longer required.

Section 22 renames Chapter 15 Part 2A of the Principal Determination which provides for overseas living allowances for members posted to an overseas posting location. Chapter 15 Part 2A previously applied to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 15 Part 2A now covers all members applying for overseas living allowances. This section amends the heading of the Part to remove the reference to 1 July 2017 which is no longer required.

Sections 23 and 25 to 29 rename Chapter 15 Part 2 Divisions 1 to 6 of the Principal Determination. These Divisions previously applied to members posted overseas on or after 1 July 2017. From 1 July 2020 these Divisions now covers all members posted overseas. These sections amend the headings of the Divisions to remove the reference to 1 July 2017 which is no longer required.

Section 24 omits section 15.2A.4 of the Principal Determination which outlines the members Chapter 15 Part 2A applies to. The omitted section says Chapter 15 Part 2A applies to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 15 Part 2A applies to all members, irrespective of whether they were posted before, on or after 1 July 2017, so this section is no longer required.

Section 30 omits the see note in section 15.4.19 of the Principal Determination, which outlines the meaning of dual liability. The note in paragraph b directed the reader to section 15.2.13 which has been removed as a consequence of this Determination. The see note has been omitted as it is not legislative in nature.

Section 31 omits section 15.4.29 of the Principal Determination which provides cost recovery for household help that may be claimed by members who were posted overseas before 1 July 2017. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence this section is no longer required.

Section 32 omits and substitutes subsection 15.6.20.3 of the Principal Determination which provides the benefits a member may be able to claim if their child is educated away from their posting location. The subsection was omitted and substituted to update the references it provides to other provisions in the Principal Determination, as a consequence of amendments made by this Determination.

Sections 33, 34 and 35 amend section 16.1.2 of the Principal Determination which provides various definitions that apply throughout Chapter 16. The definitions for hardship location, regional leave centre and relief leave centre differentiated between members who were posted overseas before, on or after 1 July 2017. As of 1 July 2020, all members posted overseas are covered under the same conditions of service on overseas postings. The definitions have been amended to update the references they provide to other provisions in the Principal Determination.

Sections 36 and 37 omit sections 16.1.6 and 16.1.7 of the Principal Determination which outlines the benefits and basis for the hardship package that a member posted overseas may be eligible for during their posting. The sections are non-legislative and administrative in nature, and referred to provisions that were removed as a consequence of this Determination.

Section 38 omits Chapter 16 Part 2 of the Principal Determination. The Part provides the overseas living allowances that members posted overseas before July 1 2017 were eligible for. From 1 July 2020 all members posted overseas are covered under the same conditions of service and as a consequence these provisions are no longer required.

Section 39 renames Chapter 16 Part 2A of the Principal Determination which provides location allowance for members to assist them with difficulties they may encounter at a hardship location. Chapter 16 Part 2A previously applied to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 16 Part 2A now covers all members applying for overseas location allowance. This section amends the heading of the Part to remove the reference to 1 July 2017 which is no longer required.

Section 40 omits and substitutes paragraph 16.2A.2.a of the Principal Determination which provides that Chapter 16 Part 2A applies to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 16 Part 3A now covers all members applying for additional recreational leave. The paragraph has been omitted and substituted to update the references it provides to other provisions in the Principal Determination.

Section 41 omits Chapter 16 Part 3 of the Principal Determination. The Part provides additional recreational leave that members posted overseas before 1 July 2017 were eligible for. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and as a consequence these provisions are no longer required.

Section 42 renames Chapter 16 Part 3A of the Principal Determination which provides for additional recreational leave that may be claimed by members at a hardship location. Chapter 16 Part 3A previously applied to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 16 Part 3A now covers all members applying for additional recreational leave. This section updates the heading of the Part to remove the reference to 1 July 2017 which is no longer required.

Section 43 omits and substitutes section 16.3A.2 of the Principal Determination which provides that Chapter 16 Part 3A applies to members posted overseas on or after 1 July 2017. From 1 July 2020 Chapter 16 Part 3A now covers all members applying for additional recreational leave. The section has been omitted and substituted to update the references it provides to other provisions in the Principal Determination.

Section 44 omits and substitutes subsection 16.4.7.1 of the Principal Determination which provides the number of trips a member would be eligible for at each leave centre for a hardship location. The subsection has been omitted and substituted to update the references it provides to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule, and was redrafted in line with contemporary drafting standards.

Section 45 amends the related information in subsection 16.4.8.1 of the Principal Determination which refers the reader to provisions covering the ordinary posting period for a location. The related information in the subsection has been amended to update the references it provides to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 46 omits and substitutes subsection 16.4.8.2 of the Principal Determination which provides the number of trips a member may take to a leave centre from their hardship location. The subsection has been omitted and substituted to update the references it provides to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule. It was also redrafted in line with contemporary drafting standards.

Section 47 amends table item 3 in subsection 16.4.9.2 of the Principal Determination which provides how the remaining number of leave trips should be allocated in the event of a reduction to the ordinary posting period by more than 12 months. The table item has been amended to update the references it provides to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule.

Section 48 omits and substitutes subsection 16.4.16.1 of the Principal Determination which provides that a member may be eligible for excess baggage costs incurred on return flights to a hardship location. The subsection has been omitted and substituted to provide updated references to other provisions in the Principal Determination, as a consequence of amendments made by this Schedule, and to incorporate the text previously in subsection 16.4.16.2 which has been omitted by section 49 of this Schedule.

Section 49 omits subsection 16.4.16.2 of the Principal Determination which directs the reader to provisions outlining the excess baggage assistance that could be claimed for each hardship location. This subsection has been incorporated into subsection 16.4.16.1 by section 48 of this Determination.

Section 50 omits section 16.8.4 of the Principal Determination which provides that selected Defence Attachés posted overseas before 1 July 2017 may receive payment for unused leave credits. As of 1 July 2020, all members posted overseas are covered under the same conditions of service and this section is no longer required.

Section 51 omits Annex 16.A of the Principal Determination. The Annex provides hardship location conditions of service for members posted overseas before 1 July 2020. As of 1 July 2020, all members posted overseas are covered under the same conditions of service so the Annex is now no longer required. All members posted overseas eligible for hardship location benefits from 1 July 2020 are eligible under Annex 16.B.

Section 52 renames Annex 16.B of the Principal Determination which provides hardship location conditions of service for members posted overseas. Annex 16.B previously applied to members posted overseas on or after 1 July 2017. As of 1 July 2020, all members posted overseas are covered under the same conditions of service. Annex 16.B now provides for all members posted to a hardship location. This section amends the heading of the Annex to remove the reference to 1 July 2017 which is no longer required.

Section 53 omits the see note from Annex 16.B of the Principal Determination. The note directed the reader to references that are no longer current, as a consequence of amendments made by this Schedule.

*Schedule 3—Maritime Logistics Personnel amendments*

Section 1 amends 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 salary non-reduction period for Maritime Logistics Personnel Operations – Grade 2 has been extended by two years to account for delays resulting from COVID-19.

*Schedule 4—Reserve Capability Payment amendments*

Section 1 amends section 3.5.14A of the Principal Determination which provides the purpose of the Division. The wording 'or the Permanent Forces' has been added to the end of the purpose statement.

Section 2 amends section 3.5.14C of the Principal Determination which provides the conditions for a member who the Division applies to. The section has been revised for clarity while the intent remains unchanged.

Sections 3 and 4 amends section 3.5.14D of the Principal Determination which provides the conditions for the offer of a Reserve capability payment. Section 3 omits and substitutes paragraph 3.5.14D.1.a which now refers to where there is a capability gap. Section 4 omits paragraph 3.5.14D.1.b which provides that the identified capability gap is unlikely to recover within three years without the use of a Reserve capability payment.

Sections 5 and 6 omits paragraph 3.5.14D.1.c, which is replicated within new 3.5.14D.1A which provides for a capability gap for a period specified by the CDF and the requirements for the CDF to offer a member of the Reserves a capability gap payment.

Section 7 amends section 3.5.14IA of the Principal Determination which provides the conditions for recognised service for a member's Service Category 4 undertaking. The amendment within section 3.5.14IA provides that a day on which the member is on continuous full-time service performed under the member's Service Category 4 undertaking may be counted as recognised service.

*Schedule 5—Benchmark schools amendments*

Section 1 amends section 14.6.13 of the Principal Determination which provides the conditions for education assistance for a member's child during an evacuation from the posting location. The amendment removes an incorrect section reference to 'Education assistance benefit – general' in paragraph 14.6.13.2.a and substitutes the correct section reference of '15.6.10B, Compulsory tuition fees".

Section 2 amends section 14A.1.18 of the Principal Determination which provides the conditions for education assistance. The amendment to the note in subsection 3 removes the reference to 'Child leaves Australia to study at posting location' and inserts 'Compulsory tuition fees' which is the correct title reference to section 15.6.10B.

Section 3 omits section 15.6.9 of the Principal Determination which sets out the conditions for benchmark schools at the posting location. The section is non-legislative and administrative in nature which does not need to be determined.

Section 4 amends Annex 15.6.A of the Principal Determination which sets out the benchmark schools for a member posted overseas. The amendment corrects references and removes examples which are non-legislative in nature which does not need to be determined.

*Schedule 6—Operation FORTITUDE amendments*

Section 1 omits table item 3A from the table in subsection 17.7.6.1 of the Principal Determination. The table sets out the daily rate of allowances members can claim for different operations. Operation FORTITUDE ceased on 31 July 2020, and no longer needs to be in the table.

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.

**Consultation**

Consultation was not considered necessary for the amendments in Schedule 1 that reduce ambiguity, correct errors and update references. The changes are technical in nature and the rule maker was satisfied that external consultation was not required.

Consultation was not considered necessary in the adjustment of the Christmas stand-down periods in Schedule 1 as it falls within the bounds of routine maintenance of an established benefit.

Consultation regarding the extension of the Puckapunyal Housing trial in Schedule 1 was undertaken with the Navy, Army and Air Force, the Directorate of Relocations and Housing, and Defence Housing Australia.

Navy, Army, Air Force, and the Directorate of Attaché and Overseas Management were consulted in the development of the changes in Schedule 2.

Consultation was undertaken with the Army and Air Force in the development of the changes in Schedule 3.

Navy, Army, Air Force and the Total Workforce Model Co-Design Working Group were consulted in the development of the changes in Schedule 4.

Consultation was not required in the development of Schedule 5 as it is limited to amendments that reduce ambiguity, corrects errors and updates references.

Consultation was not required in the development of Schedule 6 as this is an administrative amendment of the determination.

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

**Authority:** Section 58B of the
*Defence Act 1903*

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:

* The purpose of Schedule 1 is to make technical amendments that update out of date references and to redraft some sections to bring them into line with contemporary drafting standards. This Schedule also sets the Christmas stand-down periods for 2020-2021, 2021-2022 and 2022-2023 and access to leave immediately before and after the Christmas stand-down dates, and extends access to the Puckapunyal Housing trial for a further 3 years to collect more data to better understand the viability of that type of housing option.
* Remove rules, and make consequential amendments, relating to overseas conditions of service that applied to members who were posted on a long-term posting overseas before 01 July 2017, as the benefits ceased to have effect on 30 June 2020. This is in response to new conditions being provided as a part of the 2016 Australian Government Review of entitlement, additional allowances and financial support provided to Australian Government employees stationed overseas (‘the Review’). The review allowed for a 3-year transitional period for members posted on long-term postings overseas prior to 01 July 2017. Members were first advised in 2017 that they would be transferred to the new conditions as a part of the implementation of the outcomes of the Review
* Provide a salary non-reduction period of 5 years for members in the Maritime Logistics Personnel Operations – Grade 2 employment category. This extension is necessary due to the disruption of Navy training schedules by COVID-19, which has prevented members from completing their prerequisite training as agreed by the Defence Force Remuneration Tribunal in Matter 11 of 2017.
* Amend the provisions for Reserve capability payment for members of the Reserves who provide capability at short notice and are assigned as Service Category 4 by their service. The amendments provide more flexibility for a member by making the provisions less restrictive.
* Make technical amendments to provisions relating to benchmark schools by amending references and removing text that is administrative in nature.
* Remove the entry for Operation FORTITUDE as the operation ceased on 31 July 2020.

**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.

The Christmas stand-down is a period of reduced activity across Defence. Typically, members will not be required to attend for duty over the stand-down period. The stand-down provisions allow members to be paid for leave over this period of time without using their accrued leave credits. This is important over the Christmas period as it provides a member rest and leisure and adequate time away from work. Section 18 of Schedule 1 of this Determination promotes the right to just and favourable conditions of work by providing the 2020-2021, 2021-2022 and 2022-2023 Christmas stand-down dates.

The Christmas stand-down dates are equal to what is offered to Defence Australian Public Services employees and it is beyond Australian community standards of leave and public holidays at Christmas time.

The Puckapunyal housing trial provides that members who are posted to Puckapunyal in particular circumstances can receive rent allowance. The extension of the Puckapunyal Housing trial relates to the right to just and favourable conditions of work and the right to an adequate standard of living, but due to the technical nature of the amendment it does not engage with those human rights.

Sections 1 to 13, 15 to 17, and 19 to 27 of Schedule 1 of this Determination make technical amendments to the Principal Determination and do not engage any human rights issues.

Schedule 2 amends sections of the Principal Determination that relate to the right to just and favourable conditions of work and the right to an adequate standard of living, but due to the technical nature of the amendments it does not engage with those human rights.

Schedule 3 promotes the right to just and favourable conditions of work by extending the salary non-reduction period for Maritime Logistics Personnel Operations – Grade 2 to ensure that members in that employment category are not disadvantaged in their career progression as a result of delays to their pre-requisite training caused by COVID-19.

Schedule 4 of this Determination makes amendments to increase the ability to provide the Reserve capability payment by removing the three year restriction on the time in which a capability gap needs to be filled. It does not amend the conditions or payment of the Reserve capability payment. As such, it does not engage with human rights.

Schedule 5 of this Determination makes technical amendments to the Principal Determination and does not engage any human rights issues.

Schedule 6 of this determination amends the table in subsection 17.7.6.1 of the Principal Determination that relates to the right to just and favourable conditions of work and the right to an adequate standard of living, but due to the technical nature of the amendment it does not engage with those human rights.

**Conclusion**

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

Jennifer Louise Statton, Acting Assistant Secretary People Policy and Employment Conditions