

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2020 (No. 28)

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

The purpose of this Determination is to:

- Extend to Maritime Spiritual Wellbeing Officers specific conditions relating to accommodation during training and emergency support that currently apply to Chaplains. These amendments make the following changes in relation to Maritime Spiritual Wellbeing Officers:
 - Define suitable living-in accommodation provided to Maritime Spiritual Wellbeing Officers as well as Chaplains and medical officers.
 - Update the provisions relating to the contribution a member makes for living-in accommodation to include Maritime Spiritual Wellbeing Officers and any other members not currently covered by the existing provisions.
- Amend the existing parental leave provisions to:
 - Amend the conditions for paid and unpaid parental leave by removing the condition that a child having to be a dependant of a member in order to be eligible for the benefit.
 - Amend the conditions for parental leave by inserting an additional circumstance surrounding a member who gains a child who is subject to a permanent care order issued by a court or statutory authority.
 - Inserts a new benefit to provide a member who is the primary caregiver with up to 10 weeks additional paid parental leave when the child, who is a dependant, has been in their care for less than 66 weeks.

- Amend the salary non-reduction provisions to:
 - Provide the placement, increment and movement provisions Navy remote pilot warfare officers in the Officer Aviation Pay Structure administration provisions in Chapter 3 Part 2 Division 4A of the Principal Determination.
 - Provide a 3 year extension of the salary non-reduction period for members in the Electronic Warfare Submarines – SM Skill Grade 2 employment category to 23 January 2024. This extension is necessary due to the disruption of Navy training and travel caused by COVID-19, which has prevented members from completing their prerequisite training.
 - Provide a salary non-reduction period of 2 years to Army members in employment categories of Supervisor Section Supply Chain and Unit Quartermaster Advanced. This is in order to provide sufficient time for category changes to be communicated to affected members, and to provide members with sufficient time to complete the required time-in rank or gap training.
 - Remove from the Principal Determination specific entries for salary non-reduction periods after they have expired.
- Amend the provisions relating to removal to personal location to:
 - Expand the current conditions to provide for a removal for dependants of a member of the Navy who is part of flight personnel posted to a seagoing flight.
 - Provide a timeframe of three months before or after a member's posting date for when the removal must occur.
 - Provide a decision point to allow an extension to the timeframe for the removal.
 - Make consequential amendments to provisions to also provide the benefit to a member who is posted to a seagoing flight.
- Provide an allowance to members of the ADF in specific circumstances when they are undertaking duties of a higher position. The changes to higher duties allowance within this determination will modernise and simplify the application of higher duties allowance for ADF members.
- Amend the overseas reunion provisions to:
 - Relax COVID-19 restrictions relating to the overseas reunion travel, allowing dependants of a member to travel to the member's posting location overseas. This Determination maintains flexibility for the dependant to reunite with another person in Australia if the member chooses for the dependant to remain in Australia or it is not possible for the dependant to travel to the posting location due to COVID-19 travel restrictions. This is consistent with the conditions of employment provided by the Department of Foreign Affairs and Trade.
 - Make technical amendments that update out of date references and to redraft some sections to bring them into line with contemporary drafting standards
- In addition to the above, these amendments make technical amendments that update out of date references, remove material that is not legislative and redraft some sections to bring them into line with contemporary drafting standards.

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 also provides the following:

- Schedules 1, 2, 4, 6, 7 and 8 of this instrument commence on 10 December 2020.

- Schedule 3 of this instrument commences on 7 January 2021.
- Schedule 5 of this instrument commences on a day to be fixed by Assistant Secretary People Policy and Employment by notifiable instrument. If the provisions within schedule 5 do not commence within the period of 12 months beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.

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—Maritime Spiritual Wellbeing Officer amendments

Sections 1 and 2 amends section 1.3.33 of the Principal Determination which provides the definition for living-in accommodation. Section 1 replaces 'either of' with 'one of', so that the language used in the section is consistent with the amendment made by section 2 of this schedule. Section 2 includes certain types accommodation provided to medical officers, Chaplains and Maritime Spiritual Wellbeing Officers within the definition of living-in accommodation.

Section 3 amends section 7.4.15 of the Principal Determination which sets out the requirements for living-in accommodation to be suitable for particular members. The section is amended to specify that living-in accommodation provided to medical officers, Chaplains and Maritime Spiritual Wellbeing Officers for the purposes of completing compulsory residency, training or post-graduate work experience will be considered to be suitable accommodation irrespective of the requirements outlined in subsection 7.4.15.1.

Section 4 omits section 7.4.20 of the Principal Determination which provides when a medical officer is taken to be at live in accommodation. Section 7.4.20 is redundant as a consequence of the amendment made by section 3 of this schedule.

Section 5 omits section 7.4.21 of the Principal Determination which provides when a Chaplain is taken to be at live in accommodation. Section 7.4.21 is redundant as a consequence of the amendment made by section 3 of this schedule.

Section 6 omits and substitutes subsection 7.4.24.2 of the Principal Determination which sets out the contribution a member must make for living in accommodation. The subsection has been amended to provide a more accurate description of how a member's living-in contribution is calculated according to the table in Annex 7.4.B.

Section 7 amends section 7.4.24 of the Principal Determination which sets out the contribution a member must make for live-in accommodation. The amendment omits and substitutes subsection 7.4.24.5 to clearly specify the contribution payable for specific types of members when they occupy living-in accommodation. The amendment also inserts a new subsection 6, which provides the contribution rate for members not covered by subsection 5.

Section 8 omits and substitutes section 8.5.3 of the Principal Determination which sets out when a member is eligible for emergency support. The section is amended to include mandatory elements of the process for applying for emergency support and the eligibility criteria for emergency support that were previously located in section 8.5.4. The section was also amended to remove material that is non-legislative and administrative in nature.

Section 9 omits and substitutes section 8.5.4 of the Principal Determination which provided processes related to emergency support. The section has been omitted as a consequence of amendments to section 8.5.3 and to remove material that is non-legislative and administrative in nature.

Section 10 omits the see note from paragraph 8.5.5.1.b of the Principal Determination. The note directed the reader to a reference that is no longer current, as a consequence of amendments made by this Schedule.

Schedule 2—Parental leave amendments

Section 1 omits and substitutes section 1.3.77A of the Principal Determination which provides the definition of unpaid leave. The section has been amended to substitute the reference to 'paternity leave' with 'parental leave'.

Section 2 amends section 1.3.81 of the Principal Determination which provides the definition of a child. Paragraph 1.3.81.b has been amended to recognise a child who is subject to a permanent care order issued by a court or statutory authority. This section also inserts a new paragraph 1.3.81.c that provides that a child who was under a permanent care order before turning 18 years old and continues to live with the member can be recognised as a child for the purpose of the Principal Determination until they turn 21 years old.

Section 3 omits and substitutes Chapter 5 Part 7 of the Principal Determination which provides the benefit of parental leave. The new Part provides the following.

- Section 5.7.1 provides the purpose statement for parental leave.
- Section 5.7.2 identifies the members this Part applies to. This includes members who have had a child by birth, adoption or having a child placed in to their care. The Part ceases to apply to the member 66 weeks after the child came into their care.
- Section 5.7.3 identifies members this Part does not apply to. Members who are on a period of maternity leave are excluded from being able to take parental leave. This ensures that the member cannot take the 2 forms of leave at the same time.
- Section 5.7.4 provides the definitions that apply to the Part.
- Section 5.7.5 provides that a member is eligible for up to 28 days of paid parental leave. It provides that the member can take the period of leave in specified combinations of full pay and half pay. The condition relating to a child having to be a dependant of a member in order to be eligible for this benefit that was formerly provided for this leave has been removed.
- Section 5.7.6 provides that a member is eligible for additional paid parental leave if the member is the primary caregiver and the dependant has lived with the member for less than 66 weeks. Additional paid parental leave is for the lesser of 10 weeks or an amount granted at the discretion of the CDF. The section also sets out the conditions surrounding a member being exempt from having to complete a period of qualifying service in order to be eligible to receive this benefit and the member is to take the leave as a single period which can be taken in a combination of full pay and half pay.
- Section 5.7.7 provides that a member is eligible for unpaid parental leave. The condition relating to a child having to be a dependant of a member in order to be eligible for this benefit that was formerly provided for this leave has been removed.
- Section 5.7.8 provides when a member on a flexible service determination is eligible to take their paid parental leave.
- Section 5.7.9 provides that a member who is a part of a dual serving couple is eligible to take parental leave at the same time as their partner when the partner is on a specified form of leave.
- Section 5.7.10 provides the limits on the amount of parental leave a member can take.
- Section 5.7.11 provides that a member must use the approved form to apply for parental leave.

Schedule 3—Specialist Officer – Aviation amendments

Sections 1 and 2 amend section 3.2.47G of the Principal Determination which provides the entry placement into the Officer Aviation Pay Structure for members of the Navy.

- Section 1 inserts a new paragraph 3.2.47G.1.c which provides that a member who is undertaking training in a Remote Pilot Warfare Officer employment category is placed in the Command Pathway and the Remote Pilot Warfare Officer competency stream.
- Section 2 inserts a new subsection 3.2.47G.5A which provides that a member of the Navy who holder the rank of Sub Lieutenant or Lieutenant has an Officer Aviation increment of OA6 in the

Officer Aviation Pay Structure on the day that they have completed their remote pilot warfare officer training and 4 ½ years of service.

Section 3 amends section 3.2.47L of the Principal Determination which provides the entry placement for officers who into the Officer Aviation Pay Structure from another salary structure. A new subsection 3.2.47L.3A has been inserted to provide that an officer of the Navy is placed in the Command Pathway and the Remote Pilot Warfare Officer competency stream at Officer Aviation increment OA6 on the day they completed their remote pilot warfare officer training.

Sections 4 to 7 amend section 3.2.47N of the Principal Determination which provides the entry placement into the Officer Aviation Pay Structure for members of the Navy. The changes are as follows.

- Section 4 inserts a new subsection 3.2.47N.1A which provides that the section applies to a member in the Navy at the rank of Sub Lieutenant or Lieutenant. The application criteria are currently repeated in subsections 3.2.47N.1 and 3.2.47N.2, it also applies to the new subsection 3.2.47N.3. The criteria have been placed in the new subsection to remove duplication to reflect modern drafting standards.
- Sections 5 and 6 amend subsection 3.2.47N.1 and 3.2.47N.2 to remove information that has now been included in subsection 3.2.47N.1A. These changes remove duplication of information and reflect modern drafting standards.
- Section 7 inserts a new subsection 3.2.47N.3 which provides that a member in the Remote Pilot Officer Warfare Structure has an Officer Aviation increment of OA6 on the day they have completed their remote pilot warfare training and 4 ½ years of service.

Sections 8 and 9 amend section 3.2.47P of the Principal Determination which provides the Officer Aviation increment for a member in the Navy when they have a Command appointment. The changes are as follows.

- Section 8 amends subsection 3.2.47P.1 to clarify that the subsection applies to a member in the Navy in the Rotary Wing Pilot competency stream or the Aviation Warfare Officer competency stream. This change allows for the addition of the Navy Remote Pilot Warfare Officer competency stream, inserted by section 9 of this Schedule.
- Section 9 inserts a new subsection 3.2.47P.1A which provides that a member in the Navy in the Remote Pilot Warfare Officer competency stream has an Officer Aviation increment of OA25 on the day that they meet the specified conditions.

Section 10 amends subsection 3.2.47S.3 of the Principal Determination which provides the increment advancement provisions for members in the Officer Aviation Pay Structure. A new paragraph 3.2.47S.3.ba has been inserted to provide that a member of the Navy at the rank of Sub Lieutenant or Lieutenant is eligible for an increment advancement when they have performed their duties for 12 months from the day they completed remote pilot warfare officer training and completed 4 ½ years of service.

Section 11 amends subsection 3.2.47S.6 of the Principal Determination which provides the increment advancement for a member in the Air Force in the Officer Aviation Pay Structure. The subsection has been amended to fix a typographical error.

Section 12 amends section 3.2.47U of the Principal Determination which provides the increment a member may receive under the Officer Aviation Pay Structure when they transfer between pathways and competency streams. A new subsection 3.2.47U.4 has been inserted to provide that a member in the Navy who transfers from the Rotary Wing Pilot competency stream or the Aviation Warfare Officer competency stream into the Navy Remote Pilot Warfare Officer competency stream may hold the Officer Aviation increment they held immediately before transfer if that increment is equal to or higher than the one they would be eligible for under their new competency stream. This ensures that a member does not suffer a financial loss when transferring between competency streams.

Schedule 4—Salary non-reduction amendments

Sections 1 to 5 amend 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) for members with the rank of Warrant Officer Class 2 or lower, together with the start dates and end dates for salary non-reduction periods. Specifically, they do the following:

- Section 1 extends the end date for the salary non-reduction period for Electronic Warfare Submarines – SM Skill Grade 2 by 3 years, from 23 January 2021 to 23 January 2024, to account for disruptions to Navy training and travel caused by COVID-19.
- Section 2 provides a salary non-reduction period for members in employment categories 'Unit Quartermaster' and 'Operator Supply Chain Employment' in pay grade 3 until 6 January 2023 to provide members with sufficient time to complete required time-in rank or gap training as they transfer to the new Distribution Operator Employment structure.
- Sections 3, 4 and 5 omit table items 24 25 and 26 from Part 2 of Annex 3.2.B of the Principal Determination as the non-reduction period for the omitted table items expired on 17 November 2020.

Schedule 5—Higher duties allowance amendments

Section 1 omits and substitutes Chapter 4 Part 1 of the Principal Determination. The Part sets out when a member is to be paid higher duties allowance, the formula which is used to calculate the rate of higher duties allowance which is to be paid, and when payment of higher duties allowance is to cease.

- Section 4.1.1 provides the purpose of the Part.
- Section 4.1.2 provides definitions which are used in this Part. Specifically, the section defines the phrase *approver*, being a person who is able to approve the payment of higher duties allowance for an ADF member.
- Section 4.1.3 provide who the Part applies to.
- Section 4.1.4 provides who the Part does not apply to.
- Section 4.1.5 provides the criteria a member must meet to be eligible for the payment of higher duties allowance. The section further provides when an approver cannot approve the payment of higher duties allowance.
- Section 4.1.6 specifies the rate of higher duties allowance as 5% of the member's salary, which is calculated using the formula provided.
- Section 4.1.7 provides the circumstances which end a member's eligibility to receive higher duties allowance.

Section 2 omits and substitutes a cross reference under subsection 5.4.36.3 of the principle determination which provides that special arrangements apply to a member receiving higher duties allowance while on recreation leave.

Schedule 6—Removal to personal location amendments

Section 1 omits and substitutes section 6.5.21 of the Principal Determination which sets out the conditions for the removal for dependants of a member posted to a seagoing ship or seagoing submarine. The amendment simplifies the title of the section and expand the conditions to also provide for a removal of dependants of a member of the Navy who is posted to a seagoing flight and remove the limitation that a member must have six months or more remaining of their posting. A new subsection 2 has been inserted to provide that the removal must be undertaken within three months before or after the member's posting date. A new subsection 3 has also been inserted to provide that the CDF may extend the removal period under subsection 2 if it is considered reasonable in the circumstances.

Sections 2, 3 and 4 amend section 7.6.64 which sets out the conditions for dependants at a personal location and when a member's eligibility ceases for a service residence if the member is posted to a seagoing ship or seagoing submarine. The following specific amendments have been made.

- Section 2 simplifies the title of the section to apply to the dependants at a personal location of a member on a seagoing posting.
- Section 3 amends paragraph 7.6.64.1.b which provides that the section applies to a member whose posting to a seagoing ship or seagoing submarine has ended. The paragraph has been amended to also provide for a member who is posted to a seagoing flight.

- Section 4 amends paragraph 7.6.64.1.c which sets out that the member has received a new posting that is not to a seagoing ship or seagoing submarine. The paragraph has been amended to also provide for a member who is posted to a seagoing flight.

Section 5 amends item 9 of the table in subsection 7.8.5.1 of the Principal Determination which sets out the conditions for a member to be eligible for rent allowance if they or their dependants cannot find any suitable accommodation during the period set out in the table. The table item provides the conditions for a member with dependants (unaccompanied) to be able to receive rent allowance if they are posted to a seagoing ship or submarine. The provision has been amended to also provide for a member who is posted to a seagoing flight.

Section 6 amends section 9.3.29 of the Principal Determination which sets out who the Division applies to. Paragraph b has been remade to provide for a member posted to a seagoing flight.

Section 7 amends section 9.3.33 of the Principal Determination which sets out the conditions for a member's benefit for each reunion travel credit. Subparagraph 9.3.33.1.a.ii has been remade to provide for a member posted to a seagoing flight.

Schedule 7—Overseas reunion amendments

Section 1 amends section 15.3.13 of the Principal Determination which specifies when a reunion visit can take place. The amendment omits subsection 3 which prohibited the use of a reunion visit for the purpose of bringing a dependant to the overseas posting location during the COVID-19 pandemic.

Section 2 amends section 15.3.17A of the Principal Determination which provides a member with an alternative reunion visit for a dependant within Australia if the dependant was unable to be reunited with the member at the posting location overseas. The amendment omits and substitutes subsection 1 as a consequence of the amendment made by section 1 of this Determination. The amendment enables a member to use the alternative reunion visit for a dependant in Australia if they choose for the dependant to remain in Australia (for example: if there is insufficient time for the member and their dependant to spend together due to quarantine restrictions), or if COVID-19 travel restrictions prevent the dependant from traveling to the member's posting location. The travel restrictions may be imposed by an Australian Government or a foreign government.

Schedule 8—Transitional provisions

Section 1 defines 'the Determination' as being Defence Determination 2016/19, Conditions of service, which is incorporated into this Schedule as in force immediately before the commencement of this Determination.

Section 2 provides a transitional provision in relation to parental leave. It specifically applies to a member who gained a child within 66 weeks of the commencement of this Determination. The section provides that the member is eligible for a period of parental leave that does not exceed what they would have been eligible for had the changes made by Schedule 2 been in force at the time. The leave must be taken within the 66 weeks of the member gaining the child.

Section 3 provides a transitional provision in relation to higher duties allowance. It specifically applies to provide that a member who is receiving higher duties allowance immediately before the commencement of Schedule 5 of this Determination. The member is to continue to receive the allowance until the period for which they have been directed to perform higher duties ends or they are directed to cease performing the higher duties, whichever occurs first. The rate of the allowance is the rate that would have applied on the day before this determination commenced.

Section 4 provides a transitional benefit in relation to overseas reunion travel. It specifically applies to a member who would have been eligible for a benefit under section 15.3.12 of the Defence Determination had this Determination been in force on 13 November 2020. The member is eligible for the travel benefits that they would have been provided under section 15.3.12 of the Defence Determination. The member is not eligible for the benefit if they received a benefit for the same dependant under section 15.3.17A. By receiving this benefit, the number of reunion visits the member is eligible for under Chapter 15 Part 3 of the Defence Determination is reduced by 1.

Consultation

Consultation was undertaken with the Navy, DTMO and the Defence Community Organisation in the development of Schedule 1.

Army, Navy, Air Force, People Policy and Employment Conditions, and People System Business Analysis were consulted in the development of Schedules 2 and 8 (Parental leave).

Navy was consulted in the development of Schedule 3.

Army, Navy and Air Force were consulted during the development of Schedules 4, 5 and 8 (Higher duties allowance).

Navy, Army and Air Force and the Defence Tax Management Office were consulted during the development of Schedule 6.

The Department of Foreign Affairs and Trade, the Office of the Chief of the Defence Force and the Directorate of Overseas and Attaché Management within the Department of Defence were consulted in the development of Schedules 7 and 8 (Overseas reunion travel).

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. 28)

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 Schedule 1 is to extend to Maritime Spiritual Wellbeing Officers specific conditions relating to accommodation during training and emergency support that currently apply to Chaplains. These amendments make the following changes in relation to Maritime Spiritual Wellbeing Officers:
 - Define suitable living-in accommodation to include Maritime Spiritual Wellbeing Officers alongside Chaplains and medical officers.
 - Update the provisions relating to the contribution a member makes for living-in accommodation to include Maritime Spiritual Wellbeing Officers and any other members not currently covered by the existing provisions.
- The purpose of Schedules 2 and 8 (Parental leave) are to amend the existing parental leave provisions to provide the following.
 - Amend the conditions for paid and unpaid parental leave by removing the condition that a child having to be a dependant of a member in order to be eligible for the benefit.
 - Amend the conditions for parental leave by inserting an additional circumstance surrounding a member who gains a child who is subject to a permanent care order issued by a court or statutory authority.
 - Inserts a new benefit to provide a member who is the primary caregiver with up to 10 weeks additional paid parental leave when the child who is a dependant has been in their care for less than 66 weeks.
- The purpose of Schedule 3 is to provide the placement, increment and movement provisions Navy remote pilot warfare officers in the Officer Aviation Pay Structure administration provisions in Chapter 3 Part 2 Division 4A of the Principal Determination.
- The purpose of Schedule 4 is to:
 - Provide a 3 year extension of the salary non-reduction period for members in the Electronic Warfare Submarines – SM Skill Grade 2 employment category to 23 January 2024. This extension is necessary due to the disruption of Navy training and travel caused by COVID-19, which has prevented members from completing their prerequisite training.
 - Provide a salary non-reduction period of 2 years to Army members in employment categories of Supervisor Section Supply Chain and Unit Quartermaster Advanced. This is in order to provide sufficient time for category changes to be communicated to affected members, and to provide members with sufficient time to complete the required time-in rank or gap training.
 - Remove from the Principal Determination specific entries for salary non-reduction periods after they have expired.
- The purpose of Schedules 5 and 8 (Higher duties allowance) is to provide when members of the ADF are to be paid higher duties allowance, and the formula which is to be used to calculate the rate of higher duties allowance which applies.
- The purpose of Schedule 6 is to:
 - Expand the current conditions to provide for a removal for dependants of a member of the Navy who is part of flight personnel posted to a seagoing flight.

- Provide a timeframe of three months before or after a member's posting date for when the removal must occur.
- Provide a decision point to allow an extension to the timeframe for the removal.
- Make consequential amendments to provisions to also provide the benefit to a member
- The purpose of Schedules 7 and 8 (Overseas reunion travel) is to relax COVID-19 restrictions relating to the overseas reunion travel, allowing dependants of a member to travel to the member's posting location overseas. This Determination maintains flexibility for the dependant to reunite with another person in Australia if the member chooses for the dependant to remain in Australia or it is not possible for the dependant to travel to the posting location due to COVID-19 travel restrictions.

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 protection of a person's right to care for dependants

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

Schedule 1 of this Determination advances human rights by extending benefits and conditions to the new employment category of Maritime Spiritual Wellbeing Officer, and ensuring that members and their dependants have access to emergency services.

Schedules 2 and 8 (Parental leave) of this Determination promote just and favourable conditions of work and promotes the protection of a person's right to care for dependants by setting out circumstances that a member can access paid and unpaid parental. It provides an additional period of leave that is available to the member and it extends the benefit to a member who gains a child who is placed with them by a permanent care order. These changes widen the scope of members who can access the benefits of paid and unpaid parental leave and aligns the benefit with the evolving nature of parental caregiving and similar benefits offered by other Government agencies.

Schedule 3 of this Determination provides the increment placement, progression and transfer provisions through the Officer Aviation Pay Structure for members in the Navy who are Remote Pilot Warfare Officers as provided under Defence Remuneration Tribunal Determination No. 2 of 2017, Salaries. This will ensure that members who are transferred to the Officer Aviation Pay Structure will have the correct increment level within the structure throughout their career.

Section 1 of Schedule 4 of this Determination promotes the right to just and favourable conditions of work by ensuring that members are not disadvantaged in their career progression as a result of disruptions to Navy training and travel caused by COVID-19.

Section 2 of Schedule 4 of this Determination promotes the right to just and favourable conditions of work by adjusting the salary non-reduction period for Army personnel to ensure that members effected by recent changes to employment categories are not unfairly disadvantaged in their career progression as a result of not having had sufficient time to complete required time-in rank or gap training.

Sections 3-5 of Schedule 4 of this Determination amends Annex 3.2.B 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 amendments they do not engage with those human rights.

Schedules 5 and 8 (Higher duties allowance) of this Determination are compatible with the human right to the enjoyment of just and favourable conditions of work as it provides payment of higher duties allowance to ADF members for a period where they are directed to undertake duties that are above the duties that would normally be undertaken by a person holding the same rank.

Schedule 6 of this Determination advances human rights by providing a more flexible choice of housing location and associated benefits to maximise the member's dependant's chances of finding alternative coping mechanisms in the member's absence. These mechanisms may be in the form of family support or friendship networks found in a location not available at the location of the ship's home port. It is one of a range of conditions that allows the member's dependant's additional flexibility, to protect their needs while at the same time allowing the member to continue their ADF service.

Schedules 7 and 8 (Overseas reunion travel) of this Determination advance human rights by providing members who are posted overseas with the ability to reunite with their dependant who have remained in Australia as a condition of their service.

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