###### Defence Determination, Conditions of service Amendment Determination 2021 (No. 1)

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 12 sets out provisions dealing with overseas conditions of service.
* Chapter 16 sets out provisions dealing with overseas hardship locations.

The purpose of this Determination is to:

* Amend the salary non-reduction provisions to:
	+ To provide salary non-reduction for members affected by the termination of the Examiner Psychological employment category. The provisions ensure affected members' salaries are not reduced for a period of five years.
	+ Remove from the Principal Determination specific entries for salary non-reduction periods that have expired.
* Include a new posting index location and to add and update the hardship locations conditions of service for three overseas locations: Laos, Greece and Romania, which are new hardship locations. A transitional provision is provided so that members who performed duty in Greece or Romania are eligible for hardship location benefits for duty performed since 12 August 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 4 February 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Salary Non-Reduction Provisions amendments*

Sections 1, 2 and 12 amend Annex 3.2.B of the Principal Determination which 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 following changes have been made.

Section 1 inserts a new table item 1A table item 4 into Part 1 of Annex 3.2.B for members with the rank of Warrant Office Class 1. The employment category of Examiner Psychological Tier A has been inserted into the table at pay grades 5 with a salary non-reduction period of 1 July 2021 until 30 June 2026.

Section 2 omits and substitutes table item 4 into Part 1 of Annex 3.2.B for members with the rank of Warrant Office Class 1. The employment category of Manager Surveillance Target Acquisition (Reserves) has expired and has been replaced with the employment category of Examiner Psychological Tier B at pay grade 6 with a salary non-reduction period of 1 July 2021 until 30 June 2026.

Sections 3 to 10 and 12 to 14 omit various table items from Parts 1 and 2 of Annex 3.2.B. The non-reduction period for the omitted table items expired on 31 December 2020 and they no longer need to be in the table beyond that date.

Section 11 inserts new table item 17A into the table in Part 2 of Annex 3.2.B for members with the rank of Warrant Officer Class 2 or lower. The employment category of Examiner Psychological has been inserted into the table at pay grade 5 with a salary non-reduction period of 1 July 2021 until 30 June 2026.

*Schedule 2—Overseas conditions amendments*

Section 1 amends annex 12.3.B of the Principal Determination which lists the post index locations and data service provider locations used for determining the post index under section 12.3.14A. The amendment inserts a new item in the table for the posting location of Laos.

Sections 2, 3 and 4 amend Annex 16.B of the Principal Determination which provide details used for determining benefits for members posted to specific posting locations that are hardship locations. The amendments add new table items to include Greece and Romania as hardship locations, and the table item for Laos is updated. The benefits provided by the amendments align with similar hardship locations.

*Schedule 3—Transitional provisions*

Section 1 defines ‘the Defence 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 is a transitional provision that provides members who performed duty in Greece or Romania between 12 August 2020 and 4 February 2021 eligibility for location allowance under Chapter 16 Part 2A of the Principal Determination as though the amendments in Schedule 1 had commenced from 12 August 2020.

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 undertaken with the Army, Navy and Air Force during the development of Schedule 1.

Consultation was undertaken with the Navy, Army and Air Force, the Directorate of Attaché and Overseas Management during the development of Schedules 2 and 3.

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 Schedule 1 is to provide salary non-reduction for members affected by the termination of the Examiner Psychological employment category. The provisions ensure affected members' salaries are not reduced for a period of five years. The Schedule also removes from the Principal Determination specific entries for salary non-reduction periods that have expired, as they no longer need to appear after this date.

The purpose of Schedules 2 and 3 are to include a new posting index location and to add and update the hardship locations conditions of service for three posting locations: Laos, Greece and Romania, which are new hardship locations. A transitional provision is provided so that members who were posted to, and performed duty in, Greece or Romania are eligible for hardship location benefits for duty performed since 12 August 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.

Schedule 1 promotes the right to just and favourable conditions of work by ensuring that the members who are affected by the termination of their employment category have sufficient time to transition to a different employment category that advances their skill grade and remuneration to an equivalent level.

Schedules 2 and 3 advice human rights by providing additional assistance to a member performing duty in Greece, Laos or Romania that goes beyond assistance provided for normal overseas conditions of service so that the member and their dependants are compensated for the difficulties or hardships they can experience while performing duty in a hardship location.

**Conclusion**

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

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