EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination 2021 (No. 22)

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* (Legislation Act). These instruments are also subject to the interpretation principles in the AI Act.

This Determination amends the Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as a part of the member’s conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligation and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

**Purpose**

The purpose of this Determination is to:

* To make the following changes relating to career transition benefits:
  + To increase the time for which career transition training can commence from within 12 months to 24 months of the members transition date.
  + Specify that career transition training must be approved within 24 months of a member’s transition date.
  + Specify that a member is eligible for professional financial advice within 24 months of their transition date.
  + Clarify that approved absences apply to a member of the Permanent force.
* To enable a member to receive the benefit for pet relocations and the removal of other animals within Australia upfront. Members will still be able to receive the benefit as a reimbursement, but due to the increasing costs of pet relocations, some members are finding it difficult to fund the pet relocation upfront. If the benefit is not used for the stated purpose, or the pet relocation costs less than originally quoted, the member is required to repay the portion of the benefit not used.
* To make technical amendments that:
  + Extend the power to make decisions under Chapter 8 Part 6 to additional positions, allowing for less delay in assessing benefits for members with special needs.
  + Promote the use of the correct terminology, remove information which is non-legislative and administrative in nature and to bring a number of provisions within the Principal Determination into line with contemporary drafting standards.

Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.

* To change the approved club for member’s posted to Jordan from ‘Fitness First Club’ to ‘Golds Gym’. The Fitness First Club in Jordan has closed, and Defence has identified Golds Gym as the most appropriate replacement for member’s posted to that location.

**Operational details**

Details of the operation of the Determination are provided at annex A.

**Human rights compatibility**

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

**Review options**

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**

Before this Determination was made, consultation was undertaken with the following:

Schedule 1: Defence Member and Family Support Branch.

Schedule 2: Navy, Army and Air Force, the Directorate of Relocations and Housing in Defence’s Estate and Infrastructure Group and the Posting Cycle Movements Coordination Cell.

Schedules 3 and 6: Army, Navy, Air Force and the Directorate of Attaché and Overseas Management.

Schedule 4: Consultation was not considered necessary for the amendments in these schedules. The changes are technical in nature and do not amend the provision of benefits.

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

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| **Approved by:** | **Fiona Louise McSpeerin**  Assistant Secretary  People Policy and Employment Conditions |
| **Authority:** | Section 58B of the  *Defence Act 1903* |

**Annex A**

***Defence Determination, Conditions of service Amendment Determination 2021 (No. 22)***

***Operational details***

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

Section 2 provides that this Determination commences on 11 November 2021.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

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—Career transition amendments*

Section 1 and 2 insert legislative notes under subparagraphs 2.2.3.c.ii and 2.2.3.c.iii of the Principal Determination to provide cross references to the relevant sections of the Defence Regulation which apply to members who reach their retirement age or change their period of service.

Section 3 amends subsection 2.2.5.1 of the Principle Determination which provides career transition training to members to prepare for civilian life when they change service category or cease service with the ADF. The subsection has been amended in the following ways:

* Paragraph 2.2.5.1.b has been omitted and substituted to provided that a members career transition training under Chapter 2 Part 2 must be approved within 24 months of the members transition date.
* Paragraph 2.2.5.1.c has been inserted which provides that’s a members career transition training under Chapter 2 Part 2 must commence within 24 months of the members transition date. This has been extended from 12 months, and was previously provided under paragraph 2.2.5.1.b.

Section 4 amends subsection 2.2.6.1 of the Principal Determination which provides profession financial advice to members as part of their career transition. The subsection has been amended to specify that a member is eligible for professional financial advice within 24 months of their transition date.

Section 5 amends section 2.2.8.1 of the Principle Determination which provides members who are eligible to receive 23 approved absence days to attend a range of activities relating to career transition. This has been amended only apply to members of the Permanent Force.

*Schedule 2—Pet removal amendments*

Section 1 omits and substitutes section 6.1.20 of the Principal Determination which specifies the purpose of the Chapter 6 Part 1 Division 3. The section is updated to remove the reference to a reimbursement.

Sections 2, 3 and 4 amend section 6.1.21 of the Principal Determination which provides members with the reimbursement of the cost of pet relocations. The section is amended in the following ways:

* Section 2 updates the section heading to better reflect the benefit.
* Section 3 amends subsection 1 to remove the reference to the benefit being provided by reimbursement.
* Section 4 provides a definition of pet relocation, which includes both the transport and boarding of a pet, and when the benefit may be provided to the member, being either before or after the relocation service is provided. Section 4 also specifies the circumstances in which the benefit, or part of the benefit, must be repaid.

Section 5 omits and substitutes section 6.1.23 of the Principal Determination which specifies the limitations on pet relocations. The section has been remade without references to the benefit being a reimbursement and to contemporise the drafting style.

Section 6 amends section 6.1.24 of the Principal Determination which specifies the purpose of the Chapter 6 Part 1 Division 4. The section is updated to remove the reference to a reimbursement.

Section 7 omits and substitutes section 6.1.26 of the Principal Determination which provides benefits for the removal of animals that are not pets. The amendment is remade to remove references to a reimbursement and to provide rules as to when the benefit maybe provided to the member, being either before or after the relocation service is provided. Section 4 also specifies the circumstances in which the benefit, or part of the benefit, must be repaid.

*Schedule 3—Dependants with special needs amendments*

Section 1 amends subsection 1.3.84.1 of the Principal Determination which sets out who is a decision maker under section 1.3.84. The subsection is amended to include the position of ‘Executive Officer Community Support Programs’ as a decision maker, in order to extend the number of people who are authorised to make decisions relating to recognition of a dependant with special needs under section 1.3.84.

Section 2 omits and substitutes section 8.6.2 of the Principal Determination which provides the definitions which apply to Chapter 8 Part 6. The section is redrafted to include a definition of ‘decision maker’.

Sections 3 to 6 and 8 to 10 make amendments to the Principal Determination to remove references to ‘Director General Defence Member and Family Support‘ and replace them with ‘decision maker‘ in order to extend the number of people who are authorised to make a decision under Chapter 8 Part 6.

Section 7 omits subsection 8.6.9.1 of the Principal Determination which sets out who is a decision maker under section 8.6.9. The subsection is omitted as section 8.6.2 of the Principal Determination sets out who is a decision maker under Chapter 8 Part 6, so the section is no longer required.

*Schedule 4—Jordan club membership amendments*

Section 1 amends table item 10 of subsection 15.8.2.2 of the Principal Determination which specifies the approved club in the member’s location for the purpose of pursing sporting, recreational and fitness activities. The table item is amended to change the reference to ‘Fitness First Club’ to ‘Golds Gym’ to provide an approved club for members posted to Jordan to replace the closed Fitness First Club.

*Schedule 5—Miscellaneous amendments*

The changes under this Schedule are technical amendments and do not alter the underlying policies, or the benefits which are currently provided.

Section 1 omits and substitutes section 1.1.3 of the Principal Determination which provides a list of abbreviations that apply in the Principal Determination. The section is redrafted to remove abbreviations that are no longer necessary as a consequence of amendments made by this Determination, or are provided elsewhere in the Principal Determination.

Sections 2, 11-19 and 22 make amendments to the Principal Determination to remove references to ‘UN’ and replace them with ‘United Nations’ in order to aid readers understanding of those provisions and to reflect contemporary drafting styles.

Section 3 amends subsection 1.3.38.1 of the Principal Determination which provides the definition of meal costs that applies to the Principal Determination. The subsection is amended to change the reference to ‘goods and services (GST)’ to ‘GST’ to reflect contemporary drafting styles.

Section 4 omits section 1.7.23 of the Principal Determination which provides that a member imprisoned or in custody is not eligible for uniform allowance. Uniform allowance was removed by *Defence Determination, Conditions of service Amendment (Salaries and allowances modernisation) Determination 2021 (No. 5)* so the section is no longer required and is omitted.

Section 5 omits and substitutes section 4.8.8 of the Principal Determination which sets out the rate for dependant allowance in situations of dual entitlement. The section is redrafted to reflect contemporary drafting styles.

Section 6 amends paragraph 8.5.5.d of the Principal Determination which provides that emergency support includes the development of a longer term strategy to promote the well-being of the family for the remainder of the member's period of absence. The paragraph is amended to change the reference to ‘ensure’ to ‘promote’ to reflect contemporary drafting styles.

Section 7 omits and substitutes subsection 8.8.4.3 of the Principal Determination which provides that an approved person is eligible for travel assistance for the daily costs of travel to and from an inquest venue if they live locally. The subsection is redrafted to reflect contemporary drafting styles.

Section 8 amends paragraph 8.9.5.3.a of the Principal Determination which provides that specialist and allied health services that attract GST are not reimbursed under the National ADF Family Health Program. The paragraph is amended to change the reference to ‘goods and services (GST)’ to ‘GST’ to reflect contemporary drafting styles.

Sections 9 and 10 amend section 10.3.2 of the Principal Determination which provides the members that Chapter 10 Part 3 applies. The section is amended to reflect contemporary drafting styles.

Section 20 amends subsection 13.3.6.2 of the Principal Determination which provides that when a member is not able to use their travel card to pay for a meal directly, they may use it to withdraw cash from an automatic teller machine to pay for it. The section is amended to omit ‘ATM’ to reflect contemporary drafting styles.

Section 21 amends Annex 13.3.A of the Principal Determination which provides the maximum travel costs payable for travel overseas. The annex is amended to change 2 references to ‘US bases’ to ‘USA bases’ to promote the use of correct terminology.

*Schedule 6—Transitional provisions*

Section 1 defines Defence Determination 2016/19 for the purpose of this Schedule, which is incorporated as in force from time to time.

Section 2 provides that this Schedule applies to a member who was posted to Jordan and was eligible for the cost of membership in Jordan under section 15.8.4 or 15.8.5 of the Principal Determination between 28 September 2021 and the commencement of this Determination.

Section 3 provides that a member is eligible for the cost of membership under section 15.8.4 or 15.8.5 of the Principal Determination had Schedule 1 of this Determination been in force between 28 September 2021 and the commencement of this Schedule. The section also provides that the amount a member is eligible for under this section is reduced by the amount the member received for the cost of a membership under section 15.8.4 or 15.8.5 of the Principal Determination between 28 September 2021 and the commencement of this Determination that has not been repaid.

**Annex B**

***Defence Determination, Conditions of service Amendment Determination 2021 (No. 22)***

***Statement of Compatibility with Human Rights***

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Overview of the Determination**

The purpose of this Determination is to:

* To make the following changes relating to career transition benefits:
  + To increase the time for which career transition training can commence from within 12 months to 24 months of the members transition date.
  + Specify that career transition training must be approved within 24 months of a member’s transition date.
  + Specify that a member is eligible for professional financial advice within 24 months of their transition date.
  + Clarify that approved absences apply to a member of the Permanent force.
* To enable a member to receive the benefit for pet relocations and the removal of other animals within Australia upfront. Members will still be able to receive the benefit as a reimbursement, but due to the increasing costs of pet relocations, some members are finding it difficult to fund the pet relocation upfront. If the benefit is not used for the stated purpose, or the pet relocation costs less than originally quoted, the member is required to repay the portion of the benefit not used
* To make technical amendments that:
  + Extend the power to make decisions under Chapter 8 Part 6 to additional positions, allowing for less delay in assessing benefits for members with special needs.
  + Promote the use of the correct terminology, remove information which is non-legislative and administrative in nature and to bring a number of provisions within the Principal Determination into line with contemporary drafting standards.

Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.

* To change the approved club for member’s posted to Jordan from ‘Fitness First Club’ to ‘Golds Gym’. The Fitness First Club in Jordan has closed, and Defence has identified Golds Gym as the most appropriate replacement for member’s posted to that location.

**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.

**Assessment of compatibility**

Schedule 1 is compatible with human rights as it provides benefits for a member to assist them with training and financial advice in preparation for civilian life when they change service category or cease service with the ADF.

Schedule 2 is compatible with human rights as it provides members with an upfront benefit as a part of their conditions of service package to enable them to recover the costs of a pet relocation before the service is provided, thus minimising any hardship suffered as a consequence of paying of the service upfront.

Schedule 3 makes technical amendments to the Principal Determination and does not engage any human rights issues.

Schedules 4 and 6 provide just and favourable conditions of work for members by providing a replacement approved club for members and their dependants to join when the member is posted to Jordan, so members and their dependants in that location can continue to pursue sporting, recreational and fitness activities.

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

**Conclusion**

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*.