EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination 2022 (No. 12)

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 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 obligations 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 do the following:

* Extend the salary non-reduction for Army Royal Australian Engineer Geomatic Technicians to 31 January 2024. This will preserve the salary of members who do not currently meet the new prerequisites for the new surveyor employment categories who were affected by unanticipated delays during the delivery of training to transition to the new employment categories.
* Amend the rate of allowances for a member who is posted to a remote location. The rates are adjusted annually based on the advice provided by the contracted service provider and the consumer price index.
* Provide a housing entitlement to a member for their adult child who is aged between 21 and 25 when that child ceases to be a dependant for conditions of service purposes but continues to reside with the member or the member’s partner. Extant benefits outside of housing which are currently provided for a member’s dependant are not provided for an adult child.
* Make miscellaneous amendments, including the following:
* Make a number of technical amendments that do not alter the underlying policies, or the benefits which are currently provided. This includes the removal of information that is non-legislative in nature and does not need to be determined.
* Update the name and email address of the Defence Family Helpline to reflect what appears on the Defence Member and Family Support page. These technical amendments do not alter the underlying policies or the benefits which are currently provided.
* Repeal the temporary COVID-19 specific conditions for members posted overseas that ceased on 30 June 2022 as restrictions were lifted and whole‑of‑government policy model reverted to business as usual.
* Include approved summer schools for members posted to Laos, a newly-established overseas posting location.
* Provide transitional provisions relating to:
* Salary non-reduction for Geomatic Technicians.
* Payment for loss or damage to clothing or personal effects for a member on Reserve service.
* Reimbursement to members posted to Laos, who had a child attending either Angkham Sports and Wellness Centre Swim Camp, Gerard’s Music and English Summer Camp, The Chanthavone Football Club Camp, or Vientiane International School.

**Operational details**

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

**Retrospective application**

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

**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, the following consultation was undertaken:

* For Schedule 1 the rule maker was satisfied that external consultation was not required.
* For Schedule 2 the rule maker was satisfied that the changes made are technical in nature and external consultation was not required.
* For Schedule 3 Navy, Army, Air Force, Directorate of Relocations and Housing and Defence Housing Australia.
* For Schedule 4 the following:
* The rule maker was satisfied that the changes made by items 1 to 3 and 6 are technical in nature and external consultation was not required.
* Defence Member and Family Support were consulted for items 4 and 5.
* Department of Foreign Affairs and Trade were consulted for items 7 to 12.
* For Schedule 5 the Directorate of Attaché and Overseas Management.

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

|  |  |
| --- | --- |
| **Approved by:** | **Michael Ian McCulloch**Acting Assistant SecretaryPeople Policy and Employment Conditions |
| **Authority:** | Section 58B of the *Defence Act 1903* |

**Annex A**

***Defence Determination, Conditions of service Amendment Determination 2022 (No. 12)***

***Operational details***

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

Section 2 provides the following commencement dates:

* Schedules 1 and 3 to 6 of this Determination commence on 1 September 2022.
* Schedule 2 of this Determination commences on 10 November 2022.

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—Salary non-reduction provision extension amendments*

Items 1, 2 and 3 amend the table in Part 2 of Annex 3.2.B of the Principal Determination which provides salary non-reduction periods for employment categories of members with the rank of Warrant Officer Class 2 or lower. The amendments extend the end date of salary non-reduction periods for Geomatic Technicians to 31 January 2024.

*Schedule 2—Remote locality allowances amendments*

Item 1 amends subsection 4.4.9.1 of the Principal Determination which sets out the rate of district allowance payable to members posted to remote locations. The amendment repeals and substitutes the table in subsection 1 which has been amended to provide the updated rates of allowance for a member. The allowance rates are increased in line with the All Groups component of the Consumer Price Index for the 12‑month period ending March 2022. The underlying figures are then rounded to the nearest five dollars.

Item 2 amends subsection 4.4.19.2 of the Principal Determination which sets out the rate of Port Wakefield allowance payable to members posted to Proof and Experimental Establishment at Port Wakefield. The amendment repeals and substitutes the table in subsection 2 which has been amended to provide the updated rates of allowance for a member. The allowance rates are increased in line with the All Groups component of the Consumer Price Index for the 12‑month period ending March 2022. The underlying figures are then rounded to the nearest five dollars.

Item 3 amends section 4.4.24 of the Principal Determination which sets out the rate of Scherger allowance payable to members posted to RAAF Base Scherger. The amendment provides the updated rate of allowance for a member. The allowance rates are increased in line with the Transportation component of the Consumer Price Index for the 12‑month period ending March 2022. The underlying figures are then rounded to the nearest five dollars.

Item 4 amends section 4.4.31 of the Principal Determination which sets out the rates for Antarctic allowance payable to members posted to, or serving in, Antarctica. The amendment repeals and substitutes the table which has been amended to provide the updated annual rate of allowance for a member. The allowance rates are increased based on advice from a contracted service provider.

Item 5 amends subsection 4.4.36.2 of the Principal Determination which sets out the rates for Antarctic allowance payable to members who are eligible for common duties allowance and performing duties that are additional and unrelated to their ordinary duties for a period in Antarctica. The amendment provides the updated annual rate of allowance for a member. The allowance rates are increased based on advice from a contracted service provider.

*Schedule 3—Adult child amendments*

Item 1 inserts section 7.1.14A into the Principal Determination which provides a definition of adult child. The definition of adult child applies to Chapter 7 of the Principal Determination, and means a person who is between 21 and 25 years of age, immediately before turning 21 years old, they were a dependant of the member and the decision maker is satisfied that the person has continued to live with the member, or an adult dependant of the member, since turning 21 years old.

The section also provides who is a decision maker for the purpose of confirming a person’s eligibility to be an adult child.

Item 2 amends section 7.1.16 table item 2 of the Principal Determination which provides the posting location for a member with dependants who is undergoing initial training and is eligible for a removal. The table item is amended to include a member without dependants who has an adult child as a consequence of the definition of adult child which was inserted by item 1 of this Schedule.

Items 3, 5, 6, 8, 10 to 12, 14, 19, 24, 25, 31, 36 to 39, 41, 43, 44, 46, 47, 51 to 54 and 65 to 70 amend various provisions within Chapter 7 of the Principal Determination to include an adult child as a consequence of the introduction of the definition of adult child which is inserted by item 1 of this Schedule.

Item 4 amends subsection 7.1.17A.2 table item 1 of the Principal Determination which provides what suitable accommodation means for a member with dependants. The table item is amended to include a member without dependants who has an adult child as a consequence of the introduction of definition of adult child which was inserted by item 1 of this Schedule.

Item 7 repeals and substitutes subsection 7.2.6.3 of the Principal Determination which provides that an own home that is purchased using Defence assistance is a suitable own home, unless certain circumstances apply. The subsection has been redrafted to clarify that it applies to a member who has adult children as a consequence of the introduction of definition of adult child which was inserted by item 1 of this Schedule and to incorporate the exception into the substantive rule.

Item 9 repeals and substitutes paragraph 7.2.12.a of the Principal Determination which provides that a members home is not a suitable own home if the CDF is satisfied that the home does not have enough bedrooms for the member and their dependants. The paragraph has been redrafted to provide a cross reference to subsection 7.2.5.1A of the Principal Determination which provides the number of rooms a home must have to be a suitable own home.

Items 15 to 17 and 20 amend subsections 7.6.4.1, 7.6.4.2 and 7.6.21.2 of the Principal Determination respectively to remove tables, examples and see notes which are non-legislative in nature and do not need to be determined.

Item 18 repeals and substitutes subsection 7.6.7.1 of the Principal Determination which provides that section 7.6.7 applies to a member who has a large number of dependants. The subsection has been amended to apply to a member who has a large number of dependants or adult children as a consequence of the definition of adult child which was inserted by item 1 of this Schedule.

Items 13, 21, 33 to 35, 56, 57, 63 and 64 amend various provisions within Chapter 7 of the Principal Determination which reference “a member without dependants”. These references have been amended to “a member without dependants who has no adult children” to ensure that certain benefits continue to apply to a member who has no one living with them. This is required as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Items 22 and 23 amend section 7.6.28 of the Principal Determination which provides when a member is eligible for a Service residence. The section heading has been amended to remove reference to “with dependants” as the section now also applies to a member without dependants who has an adult child. As a consequence of the definition of adult child which was inserted by item 1 of this Schedule. Subsection 7.6.28.1 has been repealed and substituted to add “a member without dependants who has an adult child” as a member who is eligible for a Service residence and to promote contemporary drafting styles.

Item 26 repeals and substitutes subsection 7.6.30.1 of the Principal Determination which provides that a member without dependants who is eligible for rent allowance may choose to live in a surplus Service residence. The subsection has been amended to clarify that it only applies to a member without dependants who has no adult children as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Items 27 and 28 amend section 7.6.31 of the Principal Determination which provides when a member with dependants can choose a two-bedroom Service residence. The section heading has been amended to remove the reference to “with dependants” as the section now also applies to a member without dependants who has an adult child. As a consequence of the definition of adult child which was inserted by item 1 of this Schedule, subsection 7.6.28.1 has been repealed and substituted to include a member without dependants who has an adult child as a member who is eligible to choose a two-bedroom Service residence.

Items 29 repeals and substitutes subsection 7.6.37.1 of the Principal Determination which provides that Defence Housing Australia identifies Service residences that it does not need for eligible members. The subsection is non-legislative in nature, and does not need to be determined and is substituted with information provided by the exception in subsection 7.6.37.2 that has been removed by item 30 of this Schedule.

Item 30 repeals and substitutes subsection 7.6.37.2 of the Principal Determination which provides that a member who is not eligible for a Service residence may apply to Defence Housing Australia to live in a surplus Service residence. The subsection has been re-drafted to remove the exception which is has been incorporated into subsection 7.6.37.1, and to also remove the reference to “subsection 1” as a consequence of the changes made by item 29 of this Schedule.

Item 32 amends subsection 7.6.41.2 table item 1 of the Principal Determination which provides the fortnightly contribution a member with dependants must make towards a Service residence or rent band choice home. The table item is amended so that it also applies to a member without dependants who has an adult child as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 40 repeals and substitutes subsection 7.6.59.3 of the Principal Determination which provides when a member’s eligibility to occupy a Service residence ends in the event of a death of a member’s dependant. The subsection has been amended to also account for the death of an adult child.

Item 42 repeals and substitutes section 7.6.60 of the Principal Determination which provides that a member’s dependants may continue to reside in a Service residence if a member dies. The section has been amended to also apply to a member’s adult children as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule and to remove information which is non-legislative in nature and does not need to be determined.

Item 45 amends the table in subsection 7.8.5.1 of the Principal Determination which provides the period a member is eligible for rent allowance if they or their dependants cannot find suitable accommodation. The subheading which applies to table items 1 and 2 has been amended to include a member without dependants who has an adult child as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Items 48 and 49 amend section 7.8.9 of the Principal Determination which provides the rent ceilings that apply when a member’s dependants live in rental accommodation. The section has been amended to also apply to a member without dependants who has an adult child as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 50 amends section 7.8.10 of the Principal Determination which provides the rent ceiling for a member who lives in rental accommodation without dependants. Subsection 7.8.10.1 has been repealed and substituted to clarify that it applies to a member without dependants who has no adult children as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 55 repeals and substitutes paragraph 7.8.16.2.a of the Principal Determination which provides the day which a rent ceiling reduction applies from for a member who becomes a member without dependants. The paragraph has been amended to clarify that it applies to a member who becomes a member without dependants and they have no adult children as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 58 amends section 7.8.20 of the Principal Determination which provides the fortnightly rent allowance for a member who is sharing a home. Subsection 7.8.20.1A has been inserted to clarify that the section does not apply to a member without dependants who has an adult child as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Items 59 and 60 amend section 7.8.23 of the Principal Determination which provides the fortnightly rent allowance for a member who sublets their home. Items 59 and 60 amend paragraph 7.8.23.1.a and subparagraph 7.8.23.7.b.i to clarify that the section applies to a member who is a member without dependants who has an adult child when that member is subletting part of their home for which they receive rent allowance. These amendments are as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 61 amends section 7.8.25 of the Principal Determination which provides when a member may include the cost of furniture rental in the cost of rent. Subsection 7.8.25.1 has been repealed and substituted to clarify that the section only applies to a member without dependants who has no adult children. This change is as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

Item 62 amends subsection 7.8.30.1 table item 1 of the Principal Determination which provides when a member with dependants’ eligibility to rent allowance ends. Table item 1 has been amended to clarify that the table item also applies to a member without dependants who has an adult child as a consequence of the introduction of the definition of adult child which was inserted by item 1 of this Schedule.

*Schedule 4—Miscellaneous amendments*

Item 1 amends section 8.3.4 of the Principal Determination which provides the purpose of categorising members as members with dependants (unaccompanied). The item repeals paragraph 8.3.4.1.d as a consequence of Division 2 being repealed by *Defence Determination, Conditions of service Amendment (Miscellaneous and salary non-reduction) Determination 2019* (No. 25).

Item 2 amends subsection 8.4.14.5 of the Principal Determination which provides members with the cost of compulsory tuition fees for a child with special needs to attend a private school with access to a special program. The subsection is redrafted to provide clarity that the payment is per year, and to promote the use of contemporary drafting styles.

Item 3 amends subsection 8.4.14.5A of the Principal Determination which requires members who receive a benefit under subsection 8.4.14.5A to pay a contribution. The subsection is amended to substitute “until” with “under” to correct a typographical error.

Item 4 amends section 8.5.3 of the Principal Determination respectively which provides that a member’s dependant is eligible for emergency support under the Emergency Support for Families Scheme. The section has been amended to update the name of the Defence Family Helpline, as it was formerly known, to align with the information that is provided on Defence’s public facing website (Defence.gov.au) and to remove information which is non-legislative and administrative in nature.

Item 5 inserts section 10.4.1A into the Principal Determination which provides who Chapter 10 Part 4 of the Principal Determination: Loss or damage to clothing or personal effects applies to which was inadvertently omitted by *Defence Determination, Conditions of service Amendment Determination 2022* (No. 11).

Item 6 repeals subsection 14.3.6.5 of the Principal Determination which provides that a member is not eligible for pet relocation if section 14.3.6A applies. The subsection no longer applies to any members, and is therefore repealed.

Item 7 repeals section 14.3.6A of the Principal Determination which provides pet relocation costs for a member whose pet was relocated to the member’s posting location in connection with the member starting a long‑term posting overseas no later than 30 June 2022. The section no longer applies to any members, and is therefore repealed.

Item 8 repeals section 14A.1.21A of the Principal Determination which provides a member with reimbursement for up to 10 hours per week of tuition for a child who is attending a Government school in the USA that is closed for a period of time. The section ceased to apply on 30 June 2022, and is therefore repealed.

Item 9 repeals section 14A.2.7 of the Principal Determination which provides a member with quarantine accommodation assistance for each person whose travel from the member’s posting location overseas to Australia is privately funded. The section ceased to apply on 30 June 2022, and is therefore repealed.

Item 10 repeals Chapter 14A Part 3 of the Principal Determination which provides a travel restriction payment to a member and their dependants who were on a long‑term posting overseas that ended before 30 June 2022. The section no longer applies to any members or their dependants, and is therefore repealed.

Item 11 repeals section 15.6.17B of the Principal Determination which provides a member with reimbursement for costs of up to 10 days of education support for a dependent child if the member is eligible for any other type of education assistance under Part 6 for the child. The section ceased to apply on 30 June 2022, and is therefore repealed.

*Schedule 5—Approved summer schools*

Item 1 amends Annex 15.6.B of the Principal Determination which lists approved summer schools for overseas posting locations. Table item 10A has been inserted into the table in Annex 15.6.B to include approved summer schools for Laos, a newly established overseas posting location, so that a summer school benefit is available for all school‑aged children of members currently posted to Laos.

*Schedule 6—Transitional provisions*

Clause 1 provides the definition of Defence Determination 2016/19 for the purpose of this Schedule.

Clause 2 provides that a member who was eligible for salary non-reduction under table items 11, 18 or 23 of Annex 3.2.B, Part 2 as a Geomatic Technician on 30 June 2022 is to remain eligible between 1 July 2022 and the commencement of this determination, had Schedule 1 of this Determination been in force at the time.

Clause 3 provides that a member on Reserve service is eligible for a payment for loss or damage to clothing or personal effects under Chapter 10 Part 4 of the Principal Determination as though Schedule 4 of this Determination applied between 4 August 2022 and the commencement of this Determination.

Clause 4 provides a transitional provision for a member who is posted to Laos, and has a child who attended either Angkham Sports and Wellness Centre Swim Camp, Gerard’s Music and English Summer Camp, The Chanthavone Football Club Camp, or Vientiane International School between 22 June 2022 and the commencement of Schedule 5. The member is eligible for the reimbursement of the amount they would have been eligible for under section 15.6.15 of the Defence Determination had Schedule 5 of this Determination been in effect on 22 June 2022.

**Annex B**

***Defence Determination, Conditions of service Amendment Determination 2022 (No. 12)***

***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 do the following:

* Extend the salary non-reduction for Army Royal Australian Engineer Geomatic Technicians to 31 January 2024. This will preserve the salary of members who do not currently meet the new prerequisites for the new surveyor employment categories who were affected by unanticipated delays during the delivery of training to transition to the new employment categories.
* Amend the rate of allowances for a member who is posted to a remote location. The rates are adjusted annually based on the advice provided by the contracted service provider and the consumer price index.
* Provide a housing entitlement to a member for their adult child who is aged between 21 and 25 when that child ceases to be a dependant for conditions of service purposes but continues to reside with the member or the member’s partner. Extant benefits outside of housing which are currently provided for a member’s dependant are not provided for an adult child.
* Make miscellaneous amendments, including the following:
* Technical amendments that do not alter the underlying policies, or the benefits which are currently provided. This includes the removal of information that is non-legislative in nature and does not need to be determined.
* Update the name and email address of the Defence Family Helpline to align with the information that is provided on Defence’s public facing website (Defence.gov.au). These technical amendments do not alter the underlying policies or the benefits which are currently provided.
* Repeal the temporary COVID-19 specific conditions for members posted overseas that ceased on 30 June 2022 as restrictions were lifted and whole‑of‑government policy model reverted to business as usual.
* Include approved summer schools for members posted to Laos, a newly established overseas posting location.
* Provide the following transitional provisions:
* Salary non-reduction for Geomatic Technicians.
* Payment for loss or damage to clothing or personal effects for a member on Reserve service.
* Reimbursement to members posted to Laos, who had a child attending either Angkham Sports and Wellness Centre Swim Camp, Gerard’s Music and English Summer Camp, The Chanthavone Football Club Camp, or Vientiane International School.

**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.

*Right of the child to education*

The protection of a child’s right to education engages Article 28 of the Covenant on the Rights of the Child. Article 28 guarantees the rights of the child to education and achieving this right progressively and on the basis of equal opportunity.

***Assessment of compatibility***

Schedule 1 promotes the right to just and favourable conditions of work by extending the period in which a salary cannot be reduced for qualifying members by 2 years. This will preserve the salary of members who do not currently meet the prerequisites in the new surveyor employment categories which applies to Geomatic Technicians.

Schedule 2 is compatible with human rights as it provides an adjustment to remote location allowances for members who are serving in remote locations. Periodic updates of the rates ensure that they remain contemporary and reflect the changes in the cost of living.

Schedule 3 is compatible with human rights as it provides a housing benefit to members for their adult children aged between 21 and 25 when those children continue to reside with the member or the member’s Defence recognised partner.

Schedule 4 does not engage any of the applicable rights or freedoms as it makes technical amendments to the Principal Determination which do not change underlying policies or benefits, or removes benefits which ceased on 30 June 2022 as restrictions were lifted and whole‑of‑government policy model reverted to business as usual.

Schedule 5 advances human rights by providing education assistance for the children of members who are on long-term postings overseas as a part of the ADF’s conditions of service package. The Determination ensures that children accompanying members to a posting location are able to attend schools of a similar standard to those in Australia.

**Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.