EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination 2023 (No. 9)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (Defence Act) 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:

* Amend the rate of allowances for a member whose housing benefit location is a remote location. The rates are adjusted annually based on the advice provided by the contracted service provider and the consumer price index.
* Provide further clarity on eligibility of members for COVID-19 specific removals benefits with the evolving nature of state and territory restrictions.
* Extend the eligibility to plain clothing allowance to media content officers at Government House to assist with the cost of purchase or hire of civilian clothing that are required as part of their role.
* Amend provisions relating to a member’s dependant who resides in the member’s overseas posting location to allow travel by private vehicle when they are required to travel to a location outside the member’s posting location to obtain health care.
* Amend the provisions relating to the reimbursement of remedial tuition costs that a member can receive when their child’s academic performance has been impacted by the disruption caused by the member’s overseas posting.
* Provide that “Scots College” is the benchmark school for members posted to Wellington, New Zealand.
* Add an approved club for members posted to Laos so they can pursue sporting, recreational and fitness activities.
* Make technical amendments to improve the readability of the Principal Determination. Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits that are currently provided.

**Operational details**

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

**Incorporation by reference**

The Determination makes references to sections of the *Defence Determination 2016/19, Conditions of service*. This Instrument is incorporated into this Determination as in force from time to time.

**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, consultation was undertaken with Navy, Army and Air Force, Australian Signals Directorate, Australian Submarine Agency, Directorate of Attaché and Overseas Management and Joint Health Command.

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

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| **Approved by:** | **COL Kirk Lloyd**Acting Assistant SecretaryPeople Policy and Employment Conditions |
| **Authority:** | Section 58B of the *Defence Act 1903* |

**Annex A**

***Defence Determination, Conditions of service Amendment Determination 2023 (No. 9)***

***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:

* Sections 1 to 4 of the Determination commences on the day the instrument is registered.
* Schedules 1 to 3 of the Determination commences on 14 September 2023

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—Domestic amendments*

Items 1 to 10, 16, 23 to 25, 35 to 43, 46, 47, 50 to 52, 55 and 56 make various amendments to the Principal Determination to update cross‑references, provide clarity to the reader, or promote the use of contemporary drafting standards.

Item 11 amends subsection 4.4.9.1 of the Principal Determination which provides the rate of district allowance payable to members whose housing benefit location is a remote location. The table in the subsection has been amended to provide updated rates of the allowance. The allowance rates are increased in line with the ‘all groups’ component of the Consumer Price Index for the 12‑month period ending March 2023 and rounded to the nearest five dollars.

Item 12 amends subsection 4.4.19.2 of the Principal Determination which provides the rate of Port Wakefield allowance payable to members who live at the Proof and Experimental Establishment at Port Wakefield. The table in the subsection has been amended to provide updated rates of the allowance. The allowance rates are increased in line with the ‘all groups’ component of the Consumer Price Index for the 12‑month period ending March 2023 and rounded to the nearest five dollars.

Item 13 amends section 4.4.24 of the Principal Determination which provides the rate of Scherger allowance payable to members who live at RAAF Base Scherger. The section has been amended to provide the updated rate of allowance. The allowance rate has been increased in line with the transportation component of the Consumer Price Index for the 12‑month period ending March 2023 and rounded to the nearest five dollars.

Item 14 amends section 4.4.31 of the Principal Determination which provides the rates for Antarctic allowance payable to members posted to, or serving in, Antarctica. The table in the section has been amended to provide updated annual rates of the allowance. The allowance rates are increased based on advice from a contracted service provider.

Item 15 amends subsection 4.4.36.2 of the Principal Determination which provides 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 subsection has been amended to provide the updated annual rate of allowance. The allowance rate is increased based on advice from a contracted service provider.

Items 17 to 21 amend various provisions within Chapter 5 of the Principal Determination which provides various types of leave available to ADF members. The following amendments have been made:

* Item 17 inserts section 5.3.2A into the Principal Determination which provides that Part 3 of Chapter 5, which provides members paid time away from duty when they are unfit for health reasons, does not apply to a member when they are on a form of unpaid leave. This information was previously provided by an exception in subsection 5.3.10.3, which has been removed by item 18 of this Schedule.
* Item 18 amends section 5.3.10 of the Principal Determination which provides the interaction between medical absences and other forms of leave. Subsection 5.3.10.3 has been amended to provide clarity that a member may apply for a medical absence if they become unfit for duty while on a period of recreation leave or long service leave and to remove the exception.
* Items 19 and 20 amend sections 5.4.35 and 5.5.12 of the Principal Determination which provide the circumstances in which a member may be re-credited recreation leave or long service leave. The sections have been amended to provide clarity that for a member to be re‑credited leave they must, for a day, be on a period of recreation or long service leave, be unfit for duty due to illness or hospitalisation, have been approved a medical absence and have provided a medical certificate.
* Item 21 repeals and substitutes section 5.11.7 of the Principal Determination which provides the conditions which apply to the grant of a short absence in relation to a Service event or activity. The section has been redrafted to remove reference to “duty” and to provide clarity to the reader.

Items 22, 26 and 28 to 32 amend various sections in the Principal Determination which provide removal benefits for a member, their resident family or other recognised persons. The sections have been amended to provide that the benefits apply to specified persons who are required to fly to a new location as a result of COVID-19 restrictions imposed under state of territory laws, rather than flying to the location by choice.

Item 33 amends section 7.1.14 of the Principal Determination which provides definitions which apply to Chapter 7. The definition of “resident child carer” has been repealed and substituted to replace references to “dependant” with “resident family or recognised other persons” as a result of the categorisation framework which took effect on 1 July 2023.

Item 34 amends section 7.2.12 of the Principal Determination which provides when a member’s home is not suitable. Subsection 7.2.12.2 has been amended to provide that a member’s home is not suitable when a member has unaccompanied resident family and the home is in their housing benefit location.

Item 44 repeals and substitutes the heading of Chapter 8 of the Principal Determination to provide clarity to the reader as to what is provided in the Chapter.

Item 45 inserts section 8.4.5 into the Principal Determination which provides the definition of “compulsory tuition fees”. This definition has been inserted into Part 4 of Chapter 8 as it relates to education assistance for members and their resident family. The definition is currently provided under section 8.1.1 which is being repealed by item 57.b of this Schedule.

Item 48 inserts section 8.5.2 into the Principal Determination which provides the definition of “emergency situation”. This definition has been inserted into Part 5 of Chapter 8 as it relates to the Emergency Support for Families Scheme. The definition is currently provided under section 8.1.1 which is being repealed by item 57.b of this Schedule.

Item 49 amends section 8.6.6 of the Principal Determination which provides member with assistance with care or therapy services for resident family who have special needs. A definition of “Early Intervention Program” has been inserted into subsection 8.6.6.3 as the term is only found in this section. The definition is currently provided under section 8.1.1 which is being repealed by item 57.b of this Schedule.

Items 53 and 54 amend section 10.3.2 and 10.3.3 of the Principal Determination. These sections relate to a clothing benefit which assists certain members with the cost of purchase or hire of civilian clothing that are required as part of their role. The sections have been amended to extend eligibility to the benefit to media content officers at Government House.

Item 57 repeals various provisions from the Principal Determination. The repeals are as follows:

* Item 57.a repeals section 5.11.6 of the Principal Determination which provides the interaction between short absence and additional recreation leave. The section has been repealed as it is redundant as a member cannot be compelled to take their recreation leave, including additional recreation leave, after an activity.
* Item 57.b repeals Chapter 8 Part 1 of the Principal Determination which provides definitions for three terms used in Chapter 8. These definitions have been inserted into the relevant parts within Chapter 8 by items 45, 48 and 49 of this Schedule to assist in the readability for users.
* Item 57.c repeals section 9.3.30 of the Principal Determination which provides that a member who is posted to a seagoing vessel and has accompanied resident family who is also a member is not eligible for reunion travel credits. The section has been repealed to ensure that members in these circumstances are eligible for reunion travel credits.

Item 58 repeals three exceptions from the Principal Determination. These exceptions have been written into the rules by items 25, 36 and 51 of this Schedule.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

*Schedule 2—Overseas amendments*

Items 1, 2 and 13 make amendments to the Principal Determination to update cross‑references, provide clarity to the reader or promote the use of contemporary drafting standards.

Items 3 to 5 amend section 15.5.16 of the Principal Determination which provides that an eligible person may be approved travel to another location if they require immediate health care that is available only at a location other than the posting location. The section has been redrafted to promote the use of contemporary drafting styles.

Item 6 repeals and substitutes section 15.5.17 of the Principal Determination which provides that the CDF may approve travel of an escort to accompany an eligible person who them if the CDF is satisfied that they are not able to travel to the health care location independently. The section has been redrafted to promote the use of contemporary drafting styles and to provide a definition of “escort”.

Item 7 repeals and substitutes section 15.5.18 of the Principal Determination which provides that an eligible person is eligible for travel for their child to accompany them if the CDF is satisfied that alternative child care arrangements are not available. The section has been redrafted to promote the use of contemporary drafting styles.

Item 8 repeals and substitutes section 15.5.19 of the Principal Determination which provides the class of air travel that an eligible person is eligible for depending on their medical requirements. Subsection 15.5.19.3 has been added which specifies the costs that an eligible person is not eligible for. The section has also been redrafted to promote the use of contemporary drafting styles.

Item 8 also adds section 15.5.19A in to the Principal Determination which provides the formula to be used to calculate the amount that may be reimbursed if the CDF approves the use of private vehicle for an eligible person to travel.

Item 9 repeals and substitutes section 15.6.14 of the Principal Determination which provides that a member who is posted to an overseas location is eligible to be reimbursed the cost of remedial tuition for their child who accompanies them if the disruption caused by the transition to the new posting location results in the child encountering academic difficulties. The section is amended as follows:

* To clarify that a member is initially eligible for the reimbursement of 50 hours of remedial tuition, followed by an additional 150 hours if required.
* To provide what the CDF must consider when deciding whether to approve the reimbursement of remedial tuition costs.
* To clarify the period in which the remedial tuition must be undertaken.

Item 10 repeals and substitutes section 15.6.28 of the Principal Determination which provides that a member who is posted to an overseas location is eligible to be reimbursed the cost of remedial tuition for their child who remains in Australia if the disruption caused by the member’s posting results in the child encountering academic difficulties. The section is amended as follows:

* To clarify that a member is initially eligible for the reimbursement of 50 hours of remedial tuition, followed by an additional 150 hours if required.
* To provide what the CDF must consider when deciding whether to approve the reimbursement of remedial tuition costs.
* To clarify the period in which the remedial tuition must be undertaken.

Item 11 amends the table in Annex 15.6.A of the Principal Determination which provides a list of schools that set the ‘benchmark’ for the amount of education assistance a member can be reimbursed when they have a child attending an education institution at the member's posting location overseas. Item 26 of the table has been amended to provide that for members posted to Wellington, New Zealand, the benchmark school for primary and secondary school is “Scots College”.

The benchmark school for pre-school/kindergarten remains “any government school” for members posted to Wellington and any other location in New Zealand.

Item 12 amends subsection 15.8.2.2 of the Principal Determination which specifies the approved club in a member’s location for the purpose of pursuing sporting, recreational and fitness activities. The table has been amended to include an approved club for members posted to Laos.

Item 14 repeals various provisions from the Principal Determination. The repeals are as follows:

* Item 14.a repeals subsection 12.5.3.5 of the Principal Determination which provides that a person is not eligible to receive costs associated with a requirement to isolate if section 12.5.3A applies. The subsection refers to the section being repealed by item 2 of this Schedule.
* Item 14.b repeals section 12.5.3A of the Principal Determination which provides that a person required to isolate in accommodation to undertake duty in China is eligible to receive the costs associated with the requirement to isolate. The section ceased to have effect on 31 December 2022.
* Item 14.c repeals Part 4 of Chapter 14A of the Principal Determination which provides temporary accommodation for a member and their dependents who are either required to isolate before returning to China or unable to return to China due to ongoing restrictions and lockdowns. The Part ceased to have effect on 30 June 2023.
* Item 14.d repeals section 15.6.15A of the Principal Determination which provides additional education support costs for children of a member who is posted to China. The section ceased to have effect on 31 August 2023.
* Item 14.e omits subsection 16.2A.5.1A if the Principal Determination which provides rates of location allowance. This subsection provides the same rates as provided under subsection 16.2A.5.1.
* Item 14.f repeals section 16.4.14 of the Principal Determination which provides accommodation assistance for a member who is posted to China and has been approved to offset their assisted leave travel benefit to travel to an in-country location in China. The section ceased to have effect on 30 June 2023.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

*Schedule 3—Transitional provisions*

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

Clause 2 provides that a member who was posted to a seagoing vessel between 1 July 2023 and the commencement of this Determination, who had accompanied resident family and was also a member eligible for reunion travel credits under Division 4 of Part 3 to Chapter 9 of the Defence Determination as though the changes made by item 55.c of Schedule 1 of this Determination had been in force at the time.

Clause 3 provides that a member who was a media content officer at Government House between 17 January 2022 and the commencement of this Determination is eligible for the reimbursement they would have been eligible to receive under section 10.3.3 of the Defence Determination had the changes made by items 53 and 54 of Schedule 1 of this Determination been in force at the time.

Clause 4 provides that a member who has been approved for remedial tuition benefit for their child under sections 15.6.14 or 15.6.28 of the Defence Determination before the commencement of this Determination remains eligible for the benefit despite the changes made by items 9 and 10 of Schedule 2 of this Determination.

Clause 5 provides a transitional provision for a member who was posted to Wellington, New Zealand between 19 June 2023 and the commencement of this Determination if they had a child who attended primary or secondary school at the posting location, and they were required to pay compulsory tuition fees for the child to attend the school. The member is eligible for the reimbursement of education costs between 19 June 2023 and the commencement of this Determination as though the changes made by item 11 of Schedule 2 of this Determination of this Determination had been in force at the time.

Clause 6 provides a transitional provision for a member who was posted to Laos between 19 June 2023 and the commencement of this Determination. The member is eligible for the cost of the club membership they would have been eligible for had the changes made by item 12 of Schedule 2 of this Determination been in force between 19 June 2023 and the commencement of this Determination.

**Annex B**

***Defence Determination, Conditions of service Amendment Determination 2023 (No. 9)***

***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:

* Amend the rate of allowances for a member whose housing benefit location is a remote location. The rates are adjusted annually based on the advice provided by the contracted service provider and the consumer price index.
* Provide further clarity on eligibility of members for COVID-19 specific removals benefits with the evolving nature of state and territory restrictions.
* Extend the eligibility to plain clothing allowance to media content officers at Government House to assist with the cost of purchase or hire of civilian clothing that are required as part of their role.
* Amend provisions relating to a member’s dependant who resides in the member’s overseas posting location to allow travel by private vehicle when they are required to travel to a location outside the member’s posting location to obtain health care.
* Amend the provisions relating to the reimbursement of remedial tuition costs that a member can receive when their child’s academic performance has been impacted by the disruption caused by the member’s overseas posting.
* Provide that “Scots College” is the benchmark school for members posted to Wellington, New Zealand.
* Add an approved club for members posted to Laos so they can pursue sporting, recreational and fitness activities.
* Make technical amendments to improve the readability of the Principal Determination. Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits that are currently provided.

**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 requires States to provide access to different types of education.

***Assessment of compatibility***

This Determination is compatible with human rights as it:

* Provides members and their resident family updates to rates of remote location allowances to ensure that they remain contemporary and it ensures that a member’s family has alternative means of transport to enable them to obtain immediate health care available only at a location other than the member’s posting location overseas.
* Extends plain clothes allowance to a new group of members. These benefits are provided as a part of the member’s conditions of service.
* Makes amendments to the Principal Determination which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

**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*.