EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination 2024 (No. 3)

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:

* Make technical amendments that update cross references, update definition sections, promote the use of contemporary drafting styles and improve readability. These amendments do not alter the underlying policies, or the benefits that are currently provided.
* Extend the time period for the payment for excess baggage.
* Make routine updates on the vehicle allowance rate provided to eligible members to reflect the annual movement in the relevant Consumer Price Index group.
* Provide that specified Parts and Divisions of Chapter 17 apply to members who are performing duty overseas but are not on a warlike or non-warlike deployment, to ensure that a member on a peacetime deployment is eligible for relief out-of-country travel fare assistance.

**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, consultation was undertaken with Navy, Army, Air Force, Australian Submarine Agency, Australian Signals Directorate, Security and Estate Group, Headquarters Joint Operations, People Systems Business Analysis, Directorate of Relocations and Housing and Defence Travel Services.

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

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

**Annex A**

***Defence Determination, Conditions of service Amendment Determination 2024 (No. 3)***

***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 commence on the day the instrument is registered.
* Schedules 1, 2 and 4 of the Determination commences on 11 April 2024.
* Schedule 3 of the Determination commences on 4 July 2024.

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—Miscellaneous domestic amendments*

Items 1, 2, 28 and 29 amend various provisions of the Principal Determination to correct minor typographical errors.

Items 3, 4, 6, 9, 10, 12 to 19 and 21 amend various provisions within the Principal Determination to incorporate exceptions into the substantive provisions and promote the use of contemporary drafting standards.

Items 5, 7, 8, 11, 20 and 22 amend various provisions of the Principal Determination to remove deeming provisions from the sections and promote the use of contemporary drafting standards.

Items 23, 24, 27 and 32 amend various provisions of the Principal Determination to remove examples from the sections and promote the use of contemporary drafting standards.

Items 25 and 26 amend section 7.4.46 of the Principal Determination which provides for the contributions a member is required to pay when their ship is uninhabitable.

* Item 25 amends subsection 7.4.46.2 to split the table into two subsections, one relating to the contribution for a member on board an uninhabitable ship and one relating to a member on shore who is posted to an uninhabitable ship. The new subsection and tables promote the use of contemporary drafting standards.
* Item 26 amends subsection 7.4.46.3 to include a reference to subsection 2A as a consequence of the change made by item 25 of this Schedule.

Item 30 repeals and substitutes section 7.8.18 of the Principal Determination which provides for when contributions cease for a member who has no resident family or recognised other persons. The section has been amended to update the table and amend the language to promote the use of contemporary drafting standards.

Item 31 amends section 7.8.41 of the Principal Determination which provides for assistance with payments for a rental home. Subsection 7.8.41.3 has been amended to update the table and to promote the use of contemporary drafting standards.

Item 33 amends subsection 9.4.4.1 of the Principal Determination which provides the rules for the CDF to approve a closest relative for a member. The subsection has been amended to correct a cross-reference and remove a see note, promoting the use of contemporary drafting standards.

Item 34 amends subsection 9.6.13.2 of the Principal Determination which provides for the benefits a member can receive when they travel on duty. The subsection has been amended to remove a see note and update the language to promote the use of contemporary drafting standards.

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

*Schedule 2—Miscellaneous overseas amendments*

Items 1, 2, 6 and 7 amend various provisions of the Principal Determination to remove deeming provisions from the sections and promote the use of contemporary drafting standards.

Item 3 repeals and substitutes subsection 13.3.12.1 of the Principal Determination which provides for a top-up of travel costs when another organisation has paid the member less than the member would be eligible for under Defence. The subsection has been amended to remove a see note and update the language to promote the use of contemporary drafting standards.

Item 4 repeals and substitutes section 14.4.9 of the Principal Determination which provides the benefits available for the member when they travel by private vehicle. The section has been amended to remove a see note and update the language to promote the use of contemporary drafting standards.

Item 5 amends paragraph 14.4.11.2A.b of the Principal Determination which provides for excess baggage when the member and each dependant is authorised to travel to or from an overseas posting location. The paragraph has been amended to extend the date of eligibility from 1 March 2024 to 1 March 2025.

Item 8 repeals and substitutes section 14.4.18 of the Principal Determination which provides for the member to claim costs associated with the portage of personal baggage for a member’s dependants. The section has been amended to remove an example and update the language to promote the use of contemporary drafting standards.

Item 9 amends subsection 15.3.8.2 of the Principal Determination which provides for the reimbursement a member can claim when the member commutes using a private vehicle. A step table is being removed from the subsection as it provides an example of how the formula provided in the subsection is used and the removal promotes the use of contemporary drafting standards.

Item 10 amends subsection 15.4.7.3 of the Principal Determination which provides for rental bond advance for the USA, Canada and UK. The subsection has been amended to correct a minor typographical error.

Item 11 repeals and substitutes section 17.1.4 of the Principal Determination which provides the members to whom Chapter 17 does not apply. The new section provides a limited application of Chapter 17 to do the following.

* To provide that Part 4 of Chapter 17, which provides assistance for members who are seriously or very seriously ill, applies to a member who is on a long-term posting overseas, short-term duty overseas, peacetime deployment or who has a diplomatic status.
* To provide that Division 4 of Part 7 of Chapter 17, which provides relief out-of-country travel fare assistance, applies to a member on a peacetime deployment.
* To provide that the remaining provisions under Chapter 17 do not apply to these members.

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

*Schedule 3—Motor vehicle allowance*

Item 1 repeals and substitutes column C, subsection 9.6.25.1 of the Principal Determination which provides the rates of vehicle allowance. The rates have been increased in line with the annual movement in the Consumer Price Index group.

Item 2 repeals and substitutes subsection 9.6.26.1 of the Principal Determination which provides that a member’s vehicle allowance rate under section 9.6.25 may be increased if they carry a passenger, carry equipment, tools or materials or tow a caravan or trailer. The item updates the cent per kilometre increase in subsection 9.6.26.1 from “1.06” to “1.12”. The adjustment made is in line with the annual movement in the Consumer Price Index group.

*Schedule 4—Transitional Provisions*

Clause 1 defines ‘Defence Determination 2016/19’ for the purpose of this Schedule.

Clause 2 provides that a member who was required to travel to or from a long-term posting overseas and would have been eligible for a payment for excess baggage between 1 March 2024 and the commencement of this Determination is eligible for payment for excess baggage as though the change made by item 5 of Schedule 2 of this Determination had applied at the time.

Clause 3 provides a transitional provision for a member who is on a peacetime deployment for greater than 6 months between 9 November 2023 and the commencement of this Determination. The member is eligible for the period they served on the peacetime deployment to count towards relief out-of-country travel fare assistance under Division 4 of Part 7 of Chapter 17 of the Principal Determination had the changes made by item 11 of Schedule 2 applied at the time.

**Annex B**

***Defence Determination, Conditions of service Amendment Determination 2024 (No. 3)***

***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:

* Make technical amendments that update cross references, update definition sections, promote the use of contemporary drafting styles and improve readability. These amendments do not alter the underlying policies, or the benefits that are currently provided.
* Extend the time period for the payment for excess baggage.
* Make routine updates on the vehicle allowance rate provided to eligible members to reflect the annual movement in the relevant Consumer Price Index group.
* Provide that specified Parts and Divisions of Chapter 17 apply to members who are performing duty overseas but are not on a warlike or non-warlike deployment, to ensure that a member on a peacetime deployment is eligible for relief out-of-country travel fare assistance.

**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 ensures just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

***Assessment of compatibility***

Schedules 1 and 2 make amendments to the Principal Determination which do not change the underlying policies or benefits. As such, it does not engage with any of the applicable rights or freedoms.

Schedule 3 is compatible with the principles of human rights as the increase in the rate of vehicle allowance provided to members reflects just and favourable conditions of work. The annual adjustment made as a result of the changes in the Consumer Price Index ensures that the rates of allowances payable to members as a part of their conditions of service remain current.

**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*.