EXPLANATORY STATEMENT

###### Defence (Individual benefits) Determination 2024 (No. 3)

This Determination is 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.

**Purpose**

The Purpose of this Determination is to provide a reimbursement to assist with the costs incurred by the member in relation to the payment of a salary to an Au Pair. The Au Pair will care for a child who has accompanied the member on a long-term posting overseas. This will permit the member to be available to meet the short notice requirements in their role.

**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 consultation was undertaken with Navy and People Policy and Employment Conditions Branch. The rule maker was satisfied that further consultation was not required.

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

**Annex A**

***Defence (Individual benefits) 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 that the Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

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

Section 4 provides the purpose of the Determination.

Section 5 provides definitions which apply to the Determination.

Section 6 provides who the Determination applies to.

Section 7 provides the benefits which the member is eligible for under the Determination, including what conditions must be met before the member can receive the benefits.

Section 8 provides circumstances in which the member will cease to be eligible for the benefits provided by the Determination. The section further provides the formula which is used to calculate the maximum benefit that the member is eligible to receive if the Determination ceases to apply to the member mid-way through a 12-month period.

**Annex B**

***Defence (Individual benefits) 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 provide a reimbursement to assist with the costs incurred by the member in relation to the payment of a salary to an Au Pair. The Au Pair will care for a child who has accompanied the member on a long-term posting overseas. This will permit the member to be available to meet the short notice requirements in their role.

**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***

This Determination is compatible with human rights as it assists the member to maintain care for their child in circumstances where the member has to meet the short notice requirements in their role.

**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*.