

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination (No. 3) 2025

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

The Principal Determination is exempt from sunseting under item 21A of section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015. The exemption was granted as the instrument is a large and complex document that is subject to regular review and amendment. The exemption also provides certainty for members, stakeholders and administrators.

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:

- Align housing provisions that apply when a member boards in a private home or commercial establishment with those that apply when a member shares a home with other people.
- Extend the additional travel benefit provided to a member who is on extended or consecutive long-term posting overseas, to allow them and their dependant to travel to Australia from a location overseas other than the posting location. Technical amendments have also been made to improve readability.
- Make a range of technical amendments that do not alter the underlying policies, or the benefits which are currently provided by:
 - Correcting typographical errors; and
 - Promoting the use of contemporary drafting styles and improving readability by removing tables and incorporating the information into the substantive provisions.
 - Adding legislative notes to aid the readers understanding of continuation bonus provisions relating to the effect leave without pay has on effective service.
- Amend provisions which provide travel benefits to a member's resident family when a member gains a partner who is outside of Australia at the time they marry or the ADF recognises the relationship. The changes promote the use of contemporary drafting styles to improve readability as well as provide clarity on the meaning of 'point of entry', which is used to determine where travel benefits under the section are to be taken from.
- Adjust the annual threshold amount for excess pharmaceutical costs for a member who is on long-term posting overseas.
- Increase the maximum amount a member may be reimbursed for each day that the member's child attends an eligible overseas school holiday program.
- Include Djibouti as a hardship location to ensure members who are posted there have access to the overseas hardship package of benefits.

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. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Before this Determination was made, the consultation was undertaken with Navy, Army and Air Force, Directorate of Relocations and Housing, Defence Personnel Support Office Delegate Washington, Director Defence Print and Travel, and Directorate of Attaché and Overseas Management, Australian Submarine Agency Workplace Relations and Overseas Placements Branches, Australian Signals Directorate Workplace Relations and Overseas Posting Branches, Joint Health Command and the Directorate of Attaché and Overseas Management.

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

Approved by:

Sarah Kate McGregor
Acting Director General
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

Defence Determination, Conditions of service Amendment Determination (No. 3) 2025***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 to 4 of the Determination commence on 13 March 2025.

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—Alignment of sharing and boarding amendments

Item 1 amends section 7.8.3 of the Principal Determination which provides when a member is not 'sharing a home'. The section has been amended to include a new subsection which provides when a member is 'sharing a home'.

Item 2 inserts section 7.8.4 into the Principal Determination which provides when a member is 'boarding in a home'.

Items 3 and 4 amends section 7.8.10 of the Principal Determination which provides the rent ceiling for a member who is living in rental accommodation with no resident family or recognised other persons. The section has been amended to provide for members who are boarding in a private home. The following amendments have been made:

- Item 3 removes reference to "rental" from the heading of the section as it now also provides for member's who are boarding in a private home.
- Item 4 updates the table in subsection 7.8.10.2 which provides the rent ceiling that applies to members who are boarding in a private home.
- Item 4 also adds subsection 7.8.10.2A, which provides the formula which is to be used when working out the rent ceiling for a member who shares, or boards in, a home with 4 or more people.

Item 5 amends section 7.8.17 of the Principal Determination which provides the contribution a member must make when living in a rented home. The section has been amended to clarify that it also applies to a member who is boarding in a private home, as well as align the contribution a member boarding must make with the contribution that applies to a member who is sharing a rented home.

Item 6 amends section 7.8.19 of the Principal Determination which provides the general rule on how to calculate rent allowance. The section has been amended to promote consistency and the use of contemporary drafting styles within the Principal Determination.

Item 7 amends section 7.8.20 of the Principal Determination which provides how to calculate rent allowance for a member who is sharing a home. The section has been repealed and substituted to promote the use of contemporary drafting styles, and improve readability.

Item 7 also inserts section 7.8.20A into the Principal Determination which provides how to calculate rent allowance for a member who is boarding in a home, including the calculation which is to be used to calculate the amount of rent allowance payable. The new section also provides how visitors are to be treated when staying in a home the member is boarding in if they stay for more than 4 weeks.

Item 8 and 9 amend Part 2 of Annex 7.D of the Principal Determination which provides the contribution rates for members in rental accommodation without resident family and recognised other persons. The following amendments have been made:

- Item 8 amends paragraph c of Part 2 of Annex 7.D to provide the contribution for a member whose rent ceiling is set by 7.8.10.2 table item 3, 4, 5 or 6. This change is as a consequence of the changes made by item 4 of this Schedule.
- Item 9 amends the heading of Part 2 to Annex 7.D to clarify that it applies to members without resident family and recognised other persons who are sharing accommodation with 2 or more other people.

Schedule 2—Additional travel benefit amendments

Item 1 inserts section 14.4.17A into the Principal Determination. The new section provides that a member is eligible for travel to the overseas posting location under subsection 14.4.17.3 of the Principal Determination for their dependant if one of the following occurs:

- The member is on long-term posting overseas and their posting is extended or they are posted for a consecutive long-term posting overseas.
- The member is on short-term duty overseas and they are posted on long-term posting overseas after their short-term duty ends.

This information was previously provided under section 15.3.40 of the Principal Determination, which has been repealed as a consequence of the changes made by item 2 of this Schedule.

Item 2 repeals and substitutes Division 7 of Part 3 of Chapter 15 of the Principal Determination which provides additional travel benefits to members and their dependant if a member's long-term posting overseas is extended or the member is posted for a consecutive long-term posting overseas. The Division is repealed and substituted to make the following changes:

- To enable a member and their dependant to travel from a location that is not the member's overseas posting location.
- Account for circumstances where the member is posted for consecutive long-term posting to the same overseas posting location.

In addition to this, the Division has been broken down into subdivisions to improve readability and to provide clarity to the reader. The Division now provides the following:

Subdivision 1: General provisions

- Section 15.3.37 provides the purpose statement, which is amended to highlight that additional travel benefits provided under the Division are designed to give members and their dependants respite from the overseas location and to help them with reconnecting with family and friends in Australia.
- Section 15.3.38 provides the definition of decision maker which applies to the Division.
- Section 15.3.39 provides when travel under the Division must occur, and includes a discretion for the CDF to allow a member or their dependant to travel outside of the standard timeframe having regard to specific factors.

Subdivision 2: Additional travel if posted to the same overseas location

- Section 15.3.40 provides that Subdivision 2 applies to a member on long-term posting overseas who is required to remain in the same posting location for an additional 12 months or more.
- Section 15.3.41 provides the travel benefits a member is eligible for under Subdivision 2, including the ability for a member and their dependant to travel from a location other than the member's posting location if specific criteria are met.

Subdivision 3: Additional travel if posted to a different overseas location

- Section 15.3.42 provides that Subdivision 3 applies to a member on long-term posting overseas who is posted for a consecutive posting for 12 months or more to a different overseas posting location.

- Section 15.3.43 provides the travel benefits a member is eligible for under Subdivision 3, including the ability for a member and their dependant to travel from a location other than the member's posting location if specific criteria are met.

Item 3 amends section 16.4.4 of the Principal Determination which provides how the number of assisted leave travel trips allocated to a person are reduced when used or offset. The section has been updated to amend the cross reference in paragraph 16.4.4.c as a consequence of the changes made by item 2 of this Schedule.

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

Schedule 3—Miscellaneous amendments

Items 1 and 3 amend subsection 3.2.47N.1 and subparagraph 3.4.4.1.b.ii of Principal Determination respectively to correct minor typographical errors.

Item 2 repeals and substitutes subsection 3.2.47K.5 of the Principal Determination which provides the day a member becomes an Officer Aviation member. The subsection has been amended to remove the table to improve readability and promote the use of contemporary drafting styles.

Items 4 and 5 amend sections 3.4.6 and 3.4.7 which define effective service. Specifically, item 4 amends the note at paragraph 3.4.6.4.c and item 5 amends the note to the formula in subsection 3.4.7.4. Both amendments clarify repeal and substitute the note to clarify that when a member takes more than 21 days of leave without pay, they do not provide effective service for the entire period of leave without pay.

Item 6 amends section 3.4.8 which identifies members whom Division 2: Continuation bonus offer 1 applies. The item amends subsection 1 to provide that the member only needs to complete the longer of two periods between 1 July 2025 and 30 June 2028.

Items 7, 8, 10 and 11 amend sections 3.4.10 and 3.4.15 of the Principal Determination which provide when a member eligible to be given a valid offer of continuation bonus offer 1 or continuation bonus offer 2. The sections have been amended to replace reference to "being given an offer" with "being made an offer".

Item 9 amends section 3.4.13 which identifies members whom Division 3: Continuation bonus offer 2 applies. The item repeals and substitutes subsection 1 to provide that the member only needs to complete the longer of two periods between 1 July 2025 and 30 June 2028.

Item 12 repeals and substitutes section 9.3.10.2 of the Principal Determination which the definition of 'point of entry' for the purpose of providing travel benefits when a member serving in Australia, including a member serving on a seagoing ship or seagoing submarine deployed outside Australia, marries or has an ADF recognised relationship in a location outside Australia. The subsection has been repealed and substituted with the following.

- Subsection 9.3.10.2 which now provides that for the purpose of subsection 9.3.9.2, the place where the member's partner lived when they become the member's resident family is taken to be the person's point of entry into Australia.
- Subsection 9.3.10.3 provides the definition of 'point of entry into Australia'. The new definition has been amended to provide 'point of entry into Australia' means the international terminal in Australia that is closest to the member's housing benefit location that has flights available from the person's normal country of residence, either direct or indirect.

Items 13 to 17 amend section 15.5.9 and 15.5.10 of the Principal Determination which provide members with reimbursement of pharmaceutical costs when they are posted on long-term overseas with their dependants. The sections have been amended to adjust the annual threshold amounts that apply when calculating the amount a member may be reimbursed. These rate changes are routine in nature and ensure that the amount of reimbursement a member can receive aligns with the Australian Government Pharmaceutical Benefits Scheme (PBS) thresholds.

Item 18 amends paragraph 15.6.17E.1.a of the Principal Determination which provides the formula used to calculate the maximum reimbursement a member can receive for each day their child is in an eligible

overseas school holiday program. The item increases the summer school reimbursement rate from AUD 140 to AUD 150 to align with the whole-of-government's reimbursement rate.

Item 19 amends Annex 16.B of the Principal Determination which provides locations that are hardship locations for the purpose of overseas conditions of service. The Annex has been amended to add Djibouti as a hardship location to ensure that members who are posted there have access to the overseas hardship package of benefits.

Item 20 amends various provisions to Volume 1 of the Principal Determination to omit and substitute reference to "both of the following" with "all of the following" and "either of the following" with "any of the following" to improve readability and better inform the reader of the intent of the provision.

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

Schedule 4—Transitional provisions

Clause 1 provides the definitions that apply to the schedule.

Clause 2 provides the following:

- Subclause 1 provides that the transitional provision applies to a member who had no resident family or recognised other persons and was either boarding in a commercial establishment, or was boarding in a private home with 1 or more people, between 6 February 2020 and the commencement of Schedule 1.
- Subclause 2 provides that the member is eligible to receive the difference between what they paid towards the cost of their accommodation under section 7.8.17 of the Principal Determination as in force on the day the contribution was made, and the contribution the member would have made towards the cost of their accommodation had the changes made by Schedule 1 applied at the time.

Subclause 2 also provides that where the outcome of the formula in subclause 2.2 is less than zero the amount payable is \$0. This ensures that no member will be disadvantaged by the application of this transitional provision.

Defence Determination, Conditions of service Amendment Determination (No. 3) 2025**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:

- Align housing provisions that apply when a member boards in a private home or commercial establishment with those that apply when a member shares a home with other people.
- Extend the additional travel benefit provided to a member who is on extended or consecutive long-term posting overseas, to allow them and their dependant to travel to Australia from a location overseas other than the posting location. Technical amendments have also been made to improve readability.
- Make a range of technical amendments that do not alter the underlying policies, or the benefits which are currently provided by:
 - Correcting typographical errors; and
 - Promoting the use of contemporary drafting styles and improving readability by removing tables and incorporating the information into the substantive provisions.
 - Adding legislative notes to aid the readers understanding of continuation bonus provisions relating to the effect leave without pay has on effective service.
- Amend provisions which provide travel benefits to a member's resident family when a member gains a partner who is outside of Australia at the time they marry or the ADF recognises the relationship. The changes promote the use of contemporary drafting styles to improve readability as well as provide clarity on the meaning of 'point of entry', which is used to determine where travel benefits under the section are to be taken from.
- Adjust the annual threshold amount for excess pharmaceutical costs for a member who is on long-term posting overseas.
- Increase the maximum amount a member may be reimbursed for each day that the member's child attends an eligible overseas school holiday program.
- Include Djibouti as a hardship location to ensure members who are posted there have access to the overseas hardship package of benefits.

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.

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 Convention on the Rights of a Child. Article 28 requires States to provide access to different types of education.

Assessment of compatibility

Schedule 1 is compatible with human rights as it promotes the right to the enjoyment of just and favourable conditions of work by providing equal contributions for a member who is boarding in a private home to those that a member who is sharing a rented home is required to make. The amendments ensure that a member who chooses to board in a private home or commercial establishment is not disadvantaged when compared to a member who chooses to share a rented home.

Schedule 2 promotes a member's right to enjoyment of just and favourable conditions of work as it recognises the need of a member and their dependant for respite from the overseas location, and to reconnect with family and friends in Australia. This right is further promoted through the extension of benefits to a member who is on extended or consecutive posting by allowing the member and their dependant to travel from an overseas location other than the posting location.

Schedule 3, items 1 to 12 and 13 promote the right to the enjoyment of just and favourable conditions of work and to an adequate standard of living by:

- Providing travel benefits when a member gains a partner to assist them with uniting with the member at the member's housing benefit location
- Ensuring that members who are accompanied by their families on long-term overseas postings have access to benefits that are aligned with the Australian Government Pharmaceutical Benefits Scheme (PBS).
- Ensuring members who are posted to locations where they may experience difficulties or hardships due to the country to which a member is posted for overseas service have access to the overseas hardship package of benefits.

Schedule 3, item 12 promotes a child's right to education and a member's right to the enjoyment of just and favourable conditions of work as it assists members with dependants in overseas locations with the additional cost of education support and supervision where there is more than 12 weeks of school holidays in a year. This benefit is provided as a part of the member's conditions of service.

The remainder of the amendments to the Principal Determination made by Schedule 3 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*.