EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination (No. 11) 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 sunsetting 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.

* Correct typographical errors in the premature birth leave provisions which were introduced in Defence Determination, Conditions of service Amendment Determination (No. 10) 2025.
* Amend the contribution rate for living-in accommodation in Homebush and North Strathfield.
* Update the yearly benefit rate for early childhood education assistance a member is eligible for when their child is enrolled in early childhood education at the member’s posting location.

**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**

The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.

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

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| **Approved by:** | **Brigadier Kirk Lloyd**Director GeneralPeople Policy and Employment Conditions |
| **Authority:** | Section 58B of the *Defence Act 1903* |

**Annex A**

***Defence Determination, Conditions of service Amendment Determination (No. 11) 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 commences on the day the instrument is registered.
* Schedule 1 of the Determination commences immediately after the commencement of Schedule 2 of Defence Determination, Conditions of service Amendment Determination (No. 10) 2025*.*
* Schedules 2 and 3 of the Determination commence on 17 July 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—Premature birth leave amendments*

Item 1 amends section 1.2.8 of the Principal Determination which provides savings provisions for amendments made consequential to the introduction of premature birth leave by Schedule 2 of Defence Determination, Conditions of service Amendment Determination (No. 10) 2025. Paragraph 1.2.8.1.b of the section has been amended to provide that the maternity leave or paid parental leave provisions, which applied to the member for a child born on or before 10 September 2025, continue to apply. The date has been corrected from 11 September 2025, which is the date that the premature birth leave provisions commence, to ensure that the new provisions apply to a member who has a child born prematurely on 11 September 2025.

Items 2 and 3 amend sections 5.6.21 and 5.6A.6 of the Principal Determination to amend incorrect references to the premature birth leave provisions.

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

*Schedule 1—Miscellaneous amendments*

Item 1 amends section 7.4.29 of the Principal Determination which provides the rental contribution a member must make towards a single bedroom apartment accommodation in Homebush or North Strathfield. The fortnightly contribution is increased from $295.33 to $315.12 after a 6.7% increase in the rents sub-component of the Consumer Price Index over the 12-month period September 2023 to September 2024. This rate was adjusted by Defence Determination, Conditions of service (Living–in accommodation, housing contributions and allowances, and disturbance allowances) Determination (No. 7) 2025. Due to a restructure of the section, which commenced on 3 July 2025, the change to the rate was not able to be implemented and has to be remade.

Items 2 and 3 amend section 15.6.6D of the Principal Determination which provides the formula for calculating the yearly benefit for a child dependant who is enrolled in an early childhood education facility at the member’s overseas posting location. The rates provided in the formula have been increased in line with the childcare subsidy data for the year 2025 to 2026. The rates were adjusted by items 10 and 11 of Schedule 5 of Defence Determination, Conditions of service Amendment Determination (No. 10) 2025, however the incorrect rate was used to adjust the rates in the formula.

*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 the yearly benefit, as defined under section 15.6.6D. The amendment applies to for a member who was eligible for early childhood education assistance for their child between 3 July 2025 and the commencement of Schedule 2 of this Determination. The yearly benefit that is to apply to expenses incurred during that time is calculated as though the amendments made by items 2 and 3 of Schedule 2 of this Determination were in force at the time.

**Annex B**

***Defence Determination, Conditions of service Amendment Determination (No. 11) 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.

* Correct typographical errors in the premature birth leave provisions which were introduced in Defence Determination, Conditions of service Amendment Determination (No. 10) 2025.
* Amend the contribution rate for living-in accommodation in Homebush and North Strathfield.
* Update the yearly benefit rate for early childhood education assistance a member is eligible for when their child is enrolled in early childhood education at the member’s posting location.

**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 2 item 1 of this Determination is compatible with human rights as they provide assistance with the cost of housing and housing related allowances for members and their family. The increase in contribution rates payable by members for accommodation is in line with increases in the national rental market and average rent for Defence Housing Australia managed properties.

Schedule 2 items 2 and 3 are compatible with human rights as they protect the right to education of the member’s child by adjusting the rates of education assistance and early childhood education assistance for members posted overseas as a part of their conditions of service. This will allow their child to access education that the member may not have otherwise been able to afford.

Technical amendments made by Schedule 1 and the transitional provisions in Schedule 3 of this Determination 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*.