

# EXPLANATORY STATEMENT

## Defence Determination 2016/24

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Defence Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA 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 AIA Act, as modified by section 58B of the Defence Act.

In making this Determination, the rule-maker has taken the Caretaker Conventions into account. The amendments made to the Principal Determination do not represent major policy decisions that are likely to commit an incoming government, and do not commit the government to major contracts or undertakings. As such, the amendments are consistent with the continued observance of the Caretaker Conventions.

This Determination amends Chapter 15 of the Principal Determination, which sets out provisions dealing with living and working on long-term posting overseas for members of the Australian Defence Force (ADF).

This purpose of this Determination is to amend the Principal Determination with the same amendments that were made to the former Principal Determination, 2005/15, Conditions of Service, between the date the new Principal Determination, 2016/19, Conditions of service was signed (3 May 2016) and the date it is to commence (1 July 2016). The amendments made by 2016/21 and 2016/22 to the former Principal Determination inserts new or amends existing benchmark and summer schools in a range of overseas locations.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 of this Determination provides the Determination commences on 1 July 2016.

Section 3 provides that this instrument is made under section 58B of the *Defence Act 1903*.

Section 4 specifies that the amendment is made to the Principal Determination, as amended.

Section 5 provides that the Principal Determination is amended as set out in Schedules 1 and 2 of this Determination. Each Schedule amends the new Principal Determination as follows.

- Schedule 1 makes the same amendments to the Principal Determination that Defence Determination 2016/21, Overseas education assistance – amendment, made to the former Principal Determination.

Schedule 1 provides a benchmark school for members posted overseas and directed to live on Manhattan Island, New York. Benchmark schools are nominated to set the 'benchmark' for the amount of education assistance to be reimbursed to members for their children's education whilst posted overseas. For members posted to the USA the benchmark school is the government school where the member lives unless the Chief of Defence Force decides that a suitable benchmark school is not available when the member has been directed to live in a district. In the past a limit has been set for the maximum amount of reimbursement for compulsory tuition fees for these members. To avoid having to continually update the set amount to stay in line with inflation, Schedule 1 sets the Dwight School as the benchmark school for members directed to live on Manhattan Island.

- Schedule 2 makes the same amendments to the Principal Determination that Defence Determination 2016/22, Benchmark schools and summer schools – amendment, made to the former Principal Determination.

Schedule 2 inserts benchmark schools for Ethiopia and Italy. Benchmark schools set the 'benchmark' for the amount of education assistance to be reimbursed to members for their children's education at overseas posting locations.

Schedule 2 also provides new approved summer schools for Italy, Tokyo, Japan and Madrid, Spain. A member whose child attends an approved summer school may be eligible to be reimbursed the associated costs.

Criteria are provided for the exercise of discretions under both the current and new Principal Determinations, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Navy, Army and Air Force, the International Policy Division and the relevant overseas posts were consulted and agreed to the benchmark and summer schools amendments made by this Determination. Defence consulted the Department of Foreign Affairs and Trade on a number of the changes. The Service responsible for the members at each location confirmed the funding line now and into the future.

**Authority:** Section 58B of the  
*Defence Act 1903*

# Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

## **Defence Determination 2016/24, Principal Determination harmonisation**

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Determination**

The purpose of this Determination is to amend the Principal Determination with the same amendments that were made to the former Principal Determination, 2005/15, Conditions of Service, between the date the new Principal Determination, 2016/19, Conditions of service was signed (3 May 2016) and the date it is to commence (1 July 2016). The amendments made by 2016/21 and 2016/22 to the former Principal Determination inserts new or amends existing benchmark and summer schools in a range of overseas locations.

### **Human rights implications**

The summer and benchmark school provisions in this Determination advance the rights under Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education.

Defence provides a range of benefits to members posted overseas to assist members and their families to not suffer a disadvantage because of the requirement for the member to live and work overseas. Benchmark schools are nominated to set the 'benchmark' for the amount of education assistance to be reimbursed to members for their children's education whilst posted overseas. Summer schools are available for members and their families to maintain a level of education that is as close as possible to an equivalent Australian standard. This Determination provides a benchmark school for Manhattan Island, USA, Ethiopia and Italy and a summer school for Italy and an additional summer school for Madrid, Spain and Tokyo, Japan.

### **Conclusion**

This Determination is compatible with human rights because it advances the protection of human rights.

Tyson Paul Sara, Assistant Secretary People Policy and Employment Conditions