

EXPLANATORY STATEMENT

Defence Determination 2016/30

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.

This Determination amends the following chapters of the Principal Determination.

- Chapter 2 sets out provisions dealing with joining and leaving the Australian Defence Force (ADF).
- Chapter 3 sets out provisions dealing with salaries and bonuses for members of the ADF.
- Chapter 5 sets out provisions dealing with leave for members of the ADF.
- Chapter 7 sets out provisions dealing ADF housing and meals in Australia for members of the ADF.
- Chapter 8 sets out provisions dealing with members of the ADF and their dependants.
- Chapter 12 sets out provisions dealing with overseas conditions of service for members of the ADF.

This Determination is policy neutral. It has the following purposes.

- It amends some minor technical errors.
- It changes weekly rates to fortnightly rates to align with new system requirements.
- It provides that the Reserve Assistance Program is no longer a trial and will continue indefinitely.

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

Section 2 of this Determination provides that the Determination commences on 25 August 2016.

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

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

Section 5 amends section 2.0.2 of the Principal Determination, which provides a list of contents for the Part. The amendment adds the name of the part inserted by Defence Determination 2016/26, *Flexible service determination* into the content list.

Section 6 amends the cross reference in subparagraph 3.5.62.3.b.iii of the Principal Determination to direct readers to the correct paragraph.

Section 7 amends subsection 5.5.15.2 of the Principal Determination, which provides when a member's prior service may be recognised for the accrual of long service leave. The amendment updates an example that shows how the rule is not to be applied.

Sections 8 to 22 amend the Principal Determination by changing food, laundry, rent and rent ceiling periods to match the fortnightly pay period for ADF members. The changes are policy neutral: previously the rates were expressed as weekly rates, and are now expressed as fortnightly rates. The changes are explained in more detail as follows.

- Section 8 amends the definition for rent ceiling in the table in section 7.1.14 of the Principal Determination to refer to fortnightly amounts instead of the previous weekly reference.

- Section 9 substitutes the table of subsection 7.4.48.2 of the Principal Determination, which provides the food allowance rates for seagoing members in temporary accommodation ashore. Section 9 changes the rates from weekly to fortnightly amounts.
- Section 10 amends section 7.4.49 of the Principal Determination, which provides the laundry allowance rates for seagoing members in temporary accommodation ashore. Section 10 changes the rate from a weekly to fortnightly amount.
- Section 11 amends the table heading of the table in subsection 7.7.13.1 of the Principal Determination. The table now provides a reference to the fortnightly rent ceiling that applies to members in rental accommodation for a variety of circumstances.
- Section 12 amends paragraph 7.7.14.3.b of the Principal Determination, which provides the rent contribution for a member who accepts an offer of accommodation above their rent ceiling. Section 12 changes the formula from a weekly to fortnightly expression by removing the multiplier.
- Section 13 substitutes the example in section 7.7.14.3 of the Principal Determination. The example demonstrates how the rent contribution for a member who accepts an offer of accommodation above their rent ceiling is calculated. The previous example was phrased in the context of a week; the new example is phrased in the context of a fortnight.
- Section 14 substitutes subsection 7.8.15.3 of the Principal Determination, which provides examples of how a member's rent allowance may be affected if their rent ceiling is increased. The previous examples were phrased in the context of a week. The new examples are phrased in the context of a fortnight.
- Section 15 amends paragraph 7.8.19.1.a of the Principal Determination, which provides that rent is a component in working out the calculation of rent allowance. Section 15 changes the formula from a weekly to fortnightly expression.
- Section 16 amends subsection 7.8.19.2 of the Principal Determination, which provides the formula for calculating rent allowance. Section 16 changes the formula from a weekly to fortnightly expression by removing 'twice'.
- Section 17 substitutes both example tables in subsection 7.8.19.3 of the Principal Determination, which demonstrate how rent allowance is calculated in various circumstances. The previous example tables were phrased in the context of a week; the new example tables are phrased in the context of a fortnight.
- Section 18 substitutes subsection 7.8.20.2 of the Principal Determination, which provides the formula for calculating rent allowance for a member without dependants who shares a home for which they receive rent allowance. Section 18 changes the formula from a weekly to fortnightly expression.
- Section 19 substitutes the example in subsection 7.8.20.3 of the Principal Determination, which demonstrates the effect on rent allowance for a member who houses a visitor for a period longer than four weeks. The previous example was phrased in the context of a week; the new example is phrased in the context of a fortnight.
- Section 20 substitutes the formula in subsection 7.8.23.2 of the Principal Determination, which provides the formula for calculating rent allowance for a member who has sublet a rent allowance property. Section 20 changes the formula from a weekly to fortnightly expression.
- Section 21 substitutes subsection 7.8.43.2 of the Principal Determination, which provides the options available to a member for an advance to help pay rent. Section 21 changes the context from a weekly to fortnightly expression.
- Section 22 substitutes the table in section 7.9.17 of the Principal Determination, which provides the rates of food allowance for a member eligible for rent allowance while posted to a seagoing submarine. The rates provided in the table have been changed from weekly to fortnightly amounts.

Sections 23 and 24 amend Part 10 of Chapter 8 of the Principal Determination, which provides the Reserve Assistance program. The program was a trial scheme that provided access to mental health support services to members of the Reserves and their families to discuss work or personal issues. Defence's evaluation of the program resulted in a decision to make this an ongoing benefit for members of the Reserves and their families. The amendments remove the end date and all references to the program being a trial.

Section 25 amends section 12.3.2 of the Principal Determination, which provides the definition of **accompanied member**. The Principal Determination took effect on 1 July 2016 and was intended to preserve the definition of **accompanied member** that was formerly in clause 12.3.2 of Defence Determination 2005/15, Conditions of Service, as amended (the former Principal Determination). Paragraph 12.3.2.1.c was inadvertently altered in the preparation of the Principal Determination. This amendment inserts the correct provision.

Section 26 is a transitional provision for member's affected by section 25 of this Determination. It provides the means by which a member who would otherwise have been defined as an accompanied member between 1 July 2016 and commencement of this Determination had the error not occurred. 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.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be investigated by the Defence Force Ombudsman. If the complaint does not relate to a benefit payable to the member or their dependant, it may be made to the Commonwealth Ombudsman.

No external consultation was undertaken in accordance with section 17 of the *Legislation Act 2003* before this Determination was made as it is minor in nature and does not affect the rights of members. It makes minor amendments and technical adjustments.

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 2016/30, Housing, meals, Reserve Assistance Program and technical adjustments – amendment

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

This Determination is policy neutral. It has the following purposes.

- It amends some minor technical errors.
- It changes weekly rates to fortnightly rates to align with new system requirements.
- It provides that the Reserve Assistance Program is no longer a trial and will continue indefinitely.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

Article 7 the International Covenant on Economic, Social and Cultural Rights guarantees the right to just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

This Determination protects this right by correcting errors and simplifying policy to assist people to better understand and apply benefits, and so they are able to better assess the relative fairness and adequacy of their benefits.

Right to the highest attainable standard of physical and mental health

The provision of mental health care engages Article 12 of the International Covenant on Economic, Social and Cultural Rights. Article 12 recognises the right of everyone to the enjoyment of the highest attainable standard of mental health, by the creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Many Australian employers offer access to a counselling service to their employees, and sometimes their employees' families.

Counselling services assist with dealing with life challenges. Access to a counselling service supports the wellbeing of members and families so that they may maintain high levels of mental health.

The Reserve Assistance Program gives Reserve service members and their families access to counselling, regardless of whether their mental health issues are directly related to military service.

Members who have mental health issues as a result of their ADF service have access to alternative arrangements.

Conclusion

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

Lisa Annette Arnold, Acting Assistant Secretary People Policy and Employment Conditions