# EXPLANATORY STATEMENT

## Defence Determination (Short-term overseas duty travel and benchmark schools) 2018 (No. 2)

This Determination amends Defence Determination 2016/19, *Conditions of service* (the Principal Determination) and Defence Determination 2017/40, *Deployment allowance – amendment*, 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 for members of the Australian Defence Force (ADF).

* Chapter 13 sets out provisions dealing with short-term duty.
* Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

This Determination has the following purposes.

* It amends the provisions for the payment of travel costs for members travelling on short-term overseas duty to include Marshall Islands, Micronesia and Palau.
* It amends the primary and secondary benchmark schools for Canada.
* It provides a transitional provision for members who had a child attending a school in Canada that was not a benchmark school between 24 February 2017 and the commencement of this Determination.
* It amends transitional provisions in Defence Determination 2017/40, *Deployment allowance – amendment*, to correct two typographical errors.

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

Section 2 provides that this instrument commences on 25 January 2018.

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

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 sets out amendments to the Principal Determination.

Sections 1 to 6 amend Annex 13.3.A of the Principal Determination, which provides meal and incidental travel costs for members travelling on short-term duty overseas. This Annex is being amended to include Marshall Islands, Micronesia and Palau as countries for which meal and incidental costs are payable to members on short-term duty. Sections 1 to 3 provide rates for members at the rank of Brigadier or higher. Sections 4 to 6 provide rates for members at the rank of Colonel or lower. The rates have been provided by the data service provider to the Australian Government.

Schedule 2 sets out amendments to the Principal Determination.

Section 1 amends Annex 15.6.A of the Principal Determination, which provides a list of schools that set the 'benchmark' for the amount of education assistance to be reimbursed to a member who has a child who is a dependant and requires education at an overseas posting location. Benchmark schools provide a level of education that is comparable to Australian education standards. After a re-assessment of the benchmark schools in Canada, the existing benchmark primary and secondary schools are no longer considered appropriate due to education quality and the French/English language barriers.

The primary and secondary benchmark schools for Canada have been changed from any Government school to the following.

* Primary school – Fern Hill School for grades 1 to 3 and Ashbury College for grades 4 to 6.
* Secondary school – Ashbury College.

Schedule 3 provides a transitional provision for members who had a child attending school in Canada.

Section 1 provides a transitional provision for members who were on a long-term overseas posting to Canada between 24 February 2017 and the commencement of this Determination. The transitional provision will allow members to be reimbursed compulsory tuition costs when they had a child attending a primary or secondary school for which the member has paid compulsory tuition costs.

Schedule 4 sets out amendments to Defence Determination 2017/40, *Deployment allowance – amendment*.

Sections 1 and 2 amend schedule 2 of Defence Determination 2017/40, which provides transitional provisions for deployment allowance that were made by schedule 1 of the Determination. Sections 1 and 2 amend the transitional rate of deployment allowance payable for members in specific circumstances when they were deployed on Operation AUGURY or Operation MANITOU between November 2016 and November 2017. The transitional rate is being amended to AUD 85.44 from AUD 85.45. The rate of AUD 85.45 was a typographical error and would create a disparity between the rates payable to members. It would also create an increased risk of incorrect administration and incorrect payments.

**Consultation**

The following areas within Defence were consulted in the development of this Determination.

* Schedule 1 – International Policy Division.
* Schedules 2 and 3 – Navy, Army, Air Force, International Policy Division and the Defence Advisor, Ottawa Canada.
* Schedule 4 – This is a technical amendment and no consultation was required.

The rulemaker was satisfied that further external consultation was not required.

**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 (Short-term overseas duty travel and benchmark schools) 2018 (No. 2)**

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 makes amendments to Defence Determination 2016/19, *Conditions of service*.

This Determination has the following purposes.

* It amends the provisions for the payment of travel costs for members travelling on short-term overseas duty to include Marshall Islands, Micronesia and Palau.
* It amends the primary and secondary benchmark schools for Canada.
* It provides a transitional provision for members who had a child attending a school in Canada that was not a benchmark school between 27 February 2017 and the commencement of this Determination.
* It amends transitional provisions in Defence Determination 2017/40, *Deployment allowance – amendment*, to correct two typographical errors.

**Human rights implications**

Short-term overseas duty travel costs

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

*Legitimate objective:* Defence members may travel to perform duty in overseas locations. This could cause adverse effect on the lifestyle of members, as a result of extra costs at the overseas location, as compared with those in Australia.

*Reasonable, necessary and proportionate:* Defence requires its members to perform duty in these locations. Travel costs ensure that members who travel on short-term overseas duty receive an appropriate amount of for meal and incidental costs while they are there. This Determination adds Marshall Islands, Micronesia and Palau as new locations and sets meal and incidental rate limits for members performing short-term duty at these locations.

Benchmark schools

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

*Legitimate objective;* Defence often requires its members to relocate to new locations around the world. It recognises the importance of providing education assistance to enable a member's dependants to access a level of education that is comparable to Australia.

*Reasonable, necessary and proportionate:* 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. This Determination amends the benchmark schools for Canada.

A transitional provision has been included for members who have elected to send their child to a primary or secondary school which is not a benchmark school, currently this is any Government school. Government schools in Canada are free which means members would not receive a reimbursement of any compulsory tuition fees if the member's child attends a school where tuition fees are payable. The Canadian Government school system has undergone a number of changes which has reduced the number of schools and the resources that have been provided and members have elected to send their dependants to another school due to education quality and the French/English language barriers. This transitional provision will assist with the cost of education for members who elected to send their dependants to a school other than a benchmark school.

**Conclusion**

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions