

EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Flexible Service Determination) Determination 2018 (No. 15)

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

Subsection 23(1) of the Act imposes an obligation on a member of the Permanent Forces to render continuous full time service. Even though a member of the Permanent Forces is bound to render continuous full time service, subsection 23(2) of the Act enables the Chief of the Defence Force (CDF) to determine in a flexible service determination the hours or periods of duty for a member (or classes of members by virtue of subsections 33(3A) and (3AB) of the AIA Act).

The Principal Determination authorises Australian Defence Force (ADF) conditions of service within Australia and overseas. It deals with a wide range of ADF conditions of service.

When determining the hours or periods of duty for a member of the Permanent Forces under a flexible service determination, the CDF takes into account operational and/or capability requirements. A flexible service determination will provide greater flexibility for a member of the Permanent Forces in line with contemporary community standards of employment and provide the ADF with more versatile patterns of service to support operational and/or capability requirements. A flexible service determination may provide for a pattern of service, which may enable a member to attend for particular hours in a day, days in a week or for differing periods of time (for example, three months on and three months off) or a combination of these arrangements.

A flexible service determination must be in writing and may be revoked or varied by the CDF at any time (for example, because of operational and/or capability requirements). A flexible service determination will have effect subject to any terms and conditions set out in the determination (subsection 23(3) of the Act). A flexible service determination may include terms and conditions that relate to remuneration and allowances and provide for other relevant matters. Subsection 23(5) of the Act provides that a flexible service determination is not a legislative instrument within the meaning of the *Legislation Act 2003*.

In June 2016, the ADF developed and implemented the ADF Total Workforce Model (TWM) to analyse how to better meet the needs of a member of the Permanent Forces now and into the future, while still ensuring Defence capability requirements are met. The TWM better enables flexibility and mobility across full-time and part-time service categories so that a member of the Permanent Forces can better balance their personal commitments and their military career, encouraging members to make service in the ADF a longer-term career.

The more flexible options include a wider range of part-time patterns of service, the flexibility to engage in dual employment (with Defence and a private sector company, for instance), and greater ease in moving between different categories of service, such as between the Permanent Force and Reserves and between the ADF and the private sector.

The TWM comprises a spectrum of Service Categories (SERCATs) and Service Options (SERVOPs) that enable the ADF to draw on the skills and experience of its entire workforce in a more agile and integrated way. The TWM aims to manage the strategic and sustainable delivery of people capability to meet challenges in the ADF and the broader domestic workforce environment.

A member of the Permanent Forces who renders flexible service through the making of a flexible service determination is part of Service Category 6 (SERCAT 6), which is a central element of the TWM. An interim SERCAT 6 solution was implemented by the Services from 24 August 2017 to support the introduction of flexible service determinations under section 23 of the Act.

The purpose of this Determination is to implement mature conditions of service for a member of the Permanent Forces who wishes to render flexible service. The Determination modernises the remuneration and conditions of service for a member of the Permanent Forces who makes a flexible service determination.

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

Section 2 provides that sections 1 to 4 of this instrument and anything in this instrument not elsewhere covered by the table commences on the day after the instrument is registered. This provision provides that schedules 1 to 13 of this instrument commence on a day to be fixed by Assistant Secretary People Policy and Employment Conditions (the Minister's delegate to make determinations under section 58B of the *Defence Act 1903*) by notifiable instrument. However, if the provisions do not commence within the period of 12 months beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.

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 section in the Schedule concerned, and any other section in a Schedule to this instrument has effect according to its terms.

Schedule 1 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 1 Part 1 amends Chapter 1 of the Principal Determination, which sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions for members of the ADF.

Section 1 omits subsection 1.3.24A.2 from the Principal Determination which provided how a member's pattern of service can fall into two categories, under the definition of **flexible service determination**. There is now only one category of member under a flexible service determination, consequential upon the commencement of this Determination.

Section 2 omits and substitutes section 1.3.45A of the Principal Determination which provides a definition of **nonworking period** for a member on a flexible service determination. The changes remove references to leave without pay and to the now obsolete different categories in a flexible service determination. The nonworking period is now simply defined as the period that is not a member's pattern of service.

Section 3 omits subsection 1.3.47.3 from the Principal Determination which provided that the **normal working hours** for a member on a flexible service determination are provided in the flexible service determination. The rule is omitted because it is provided under the definition for **pattern of service** under section 1.3.50A of the Principal Determination, consequential upon the commencement of Schedule 1 section 4 of this Determination.

Section 4 omits and substitutes section 1.3.50A of the Principal Determination, which provides the definition of pattern of service. The definition is unchanged but references to the definitions of 'flexible service determination' and 'non-working period' have been added for context.

Section 5 omits subsection 1.3.77A.2 of the Principal Determination, which provided for the inclusion of part-time leave without pay in the definition of **unpaid leave**. Part-time leave without pay provisions have ceased, consequential upon the commencement of this Determination. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 6 inserts a note into subsection 1.3.87.2 of the Principal Determination, which provides the definition for **normally lives with** when the dependant is a child. This definition is used to assess if a child lives with a member to determine a member's categorisation. The inserted note explains that if the child stays in the member's home during nonworking periods of a member's flexible service determination, those nights may be included when assessing whether or not the child normally lives with the member.

Section 7 inserts section 1.5.4A into the Principal Determination, which provides that any unpaid contributions or payments during a period a member is not receiving salary, including a nonworking period under a flexible service determination, become a debt which the Commonwealth may recover. Guidance will be included to explain that a member must organise a method to pay their contributions or payments during their nonworking periods.

Section 8 inserts section 1.6.1A into the Principal Determination, which provides for alternative payment arrangements when a member on a flexible service determination is not paid salary during their nonworking periods. The arrangements allow the adult dependant of the member, who is also a member, to make payments during these periods on behalf of the member.

Schedule 2 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 2 amends Chapter 2 of the Principal Determination, which sets out provisions dealing with joining and leaving the ADF.

Section 1 omits "Part 1A Flexible service determination" from the list of contents under section 2.0.2 of the Principal Determination. The Part is omitted consequential upon the commencement of Schedule 2 section 2 of this Determination.

Section 2 omits Chapter 2 Part 1A of the Principal Determination, which provided interim arrangements for a member on a flexible service determination. Under these arrangements the member's nonworking period was treated as unpaid leave. The new arrangements no longer treat flexible service as unpaid leave.

Schedule 3 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 3 amends Chapter 3 of the Principal Determination, which sets out provisions dealing with salaries and bonuses for members of the ADF.

Section 1 omits and substitutes section 3.2.7 of the Principal Determination, which provides the administration of members' salary and allowances. Section 1 also inserts section 3.2.7A into the Principal Determination. The section is simplified and references to part-time leave without pay are removed. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 3.2.7 of the Principal Determination does not apply to salary or allowances for a member on a flexible service determination. Instead, the new section 3.2.7A provides for the administration of salary and allowances for a member on a flexible service determination.

Subsection 3.2.7A.2 provides that for a member on a flexible service determination, the daily rate of an annual rate of salary, an allowance determined by the Defence Force Remuneration Tribunal and certain allowances under the Principal Determination, is the annual rate divided by 365 and multiplied by 1.4. The 1.4 multiplier provides a member on a flexible service determination with a 40 per cent loading to reflect any service rendered outside of their pattern of service. A pattern of service means the hours of duty or periods of duty prescribed under a flexible service determination. The table in this subsection lists the allowances that are calculated using the formula.

Subsection 3.2.7A.3 provides that a member must not be paid more than the maximum fortnightly rate of a member not on a flexible service determination.

Subsection 3.2.7A.4 provides that the daily rate of an annual rate of location allowance is the annual rate divided by 365. A member on a flexible service determination is paid the same rate of allowance as a full-time member, regardless of their pattern of service.

Subsection 3.2.7A.5 provides that a member on a flexible service determination is paid the daily rate of salary, or an allowance for each full day of duty, or each combination of part days of duty that total eight hours in the fortnightly pay period.

Section 2 omits and substitutes section 3.2.8 of the Principal Determination, which provides how member contributions are pro-rated. Section 3.2.8 is simplified by removing information that is simply administrative. This information may be published as guidance on the Defence Pay and Conditions website.

The table under subsection 3.2.8.1 of the Principal Determination provided contribution rates for Defence housing. It is omitted and a general rule now provides that any daily rate of contribution is one fourteenth of the fortnightly rate. All references to 'part-time leave without pay' are removed from the section. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 3 amends subparagraph 3.2.30.1.c.i of the Principal Determination, which provides for when a member may be eligible for an increment advancement of salary. A note that contained a reference to a member on part-time leave without pay has been removed. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 4 omits and substitutes subsection 3.2.30.5 of the Principal Determination, which provides that a period for which a member of the Permanent Forces is not eligible for salary does not count towards the qualifying period for salary increment advancement. Section 4 provides that a member on a flexible service determination is an exception to the rule. A member is eligible for increment advancement regardless of their pattern of service.

Section 5 omits and substitutes section 3.5.2 of the Principal Determination. The section provided the method for calculating effective service for retention and completion bonus payments for a member on part-time leave without pay. The section now provides the calculation method for a member on a flexible service determination. Each day in the member's pattern of service counts as 1.4 days of effective service.

Sections 6 to 13 amend retention and completion bonus provisions under Chapter 3 Part 5 of the Principal Determination to provide what counts as effective service for a member on a flexible service determination for the purpose of working out eligibility for the bonuses.

Sections 6, 7, and 12 omit and substitute the tables under subsections 3.5.10.3, 3.5.70.3 and 3.5.95.2 of the Principal Determination. The tables list activities and leave types and the effect it has on a member's effective service for the purpose of eligibility for a bonus. Items for 'leave without pay (flexible service determination)' are omitted and replaced with 'a member on a flexible service determination'. A member's non-working period is no longer treated as a type of leave. Cross references to section 3.5.2 of the Principal Determination are provided in the tables. Section 3.5.2 provides how to calculate effective service for a member on a flexible service determination, consequential upon Schedule 3, section 5 of this Determination.

Section 8 omits an exception from the table in subsection 3.5.70.3 of the Principal Determination. Unpaid leave for less than 21 calendar days is effective service for some bonuses. The omitted exception to this rule was 'leave without pay (flexible service determination)'. It has been removed because a member's nonworking period during a flexible service determination is no longer treated as a type of leave.

Section 9 omits the table item from subsection 3.5.70.3 of the Principal Determination describing leave without pay. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 10 inserts subsections 3.5.95.1A and 3.5.95.1B into the Principal Determination, which provide the following conditions for a member on a flexible service determination:

- Each day in the member's pattern of service is multiplied by 1.4 when calculating payment of the Army – 1st targeted rank and employment category completion bonus.
- A day in the member's pattern of service is one that either equals or exceeds 8 hours, or is a combination of part days in a fortnight that add up to 8 hours.

Section 11 omits the table item in subsection 3.5.95.2 of the Principal Determination describing leave without pay. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 12 inserts a new table item into subsection 3.5.95.2 of the Principal Determination, The table provides the range of leave types and activities for a member that count towards the completion bonus. The new table item provides that for a member on a flexible service determination each day in the member's pattern of service is counted as effective service towards the completion bonus.

Section 13 omits and substitutes step 2 of the table under section 3.5.98 of the Principal Determination, which provides calculation of a partial payment of the Army – 1st targeted rank and employment category completion bonus. Section 13 provides that for a member on a flexible service determination, the number of days' service that counts towards the bonus must be multiplied by 1.4.

Schedule 4 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 4 makes amendments to Chapter 4 of the Principal Determination, which sets out provisions dealing with salary-related allowances and non-salary related allowances for members of the ADF.

Section 1 omits and substitutes paragraph 4.1.12.2.c of the Principal Determination, which provides the time limits for a member directed to perform higher duties. A cross reference to section 4.1.15 has been amended to reflect a changed section title, which was consequential upon the commencement of Defence Determination 2017/8.

Section 2 omits and substitutes paragraph 4.1.12.2.d of the Principal Determination, which provided conditions for a member on a part-time working arrangement that must be met in order for the member to be directed to perform higher duties. Reference to part-time leave without pay is removed. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination. The paragraph is simplified to clearly provide that the duties of the position must be able to be effectively carried out by the member on a flexible service determination during their pattern of service.

Section 3 omits and substitutes subsection 4.1.14.1 of the Principal Determination, which provides that the section applies to a member on continuous full-time service with an exception that other arrangements apply to a member on part-time leave without pay. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 4 omits and substitutes subsection 4.1.15.1 of the Principal Determination, which provides a list of the members the section applies to. A 'member on part-time leave without pay' is removed from the list. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service, will be implemented through the making of a flexible service determination.

Section 5 omits and substitutes subsection 4.1.15.3 of the Principal Determination, which provided that the days a member is not required to attend for duty do not break the minimum five continuous working days a member must work in a higher duties role in order to be directed to perform the higher duties. The change provides that for a member on a flexible service determination, the five day requirement is not broken by a nonworking period of 14 days or less.

Section 6 inserts an item into the table of section 4.4.4 of the Principal Determination, which provides a list of definitions of terms used in the Division providing general rules and rates of ADF district allowance. In order to be eligible for the allowance when performing temporary duty at a remote location, a member must perform duty at the location for a continuous period of more than 21 days. Section 6 inserts a definition for 'continuous period'. The definition provides that a 'continuous period' is not broken if a member is not required for duty or is on a nonworking period, whether the member remains in the location or not during those periods.

Section 7 omits and substitutes section 4.4.7 of the Principal Determination, which provides the period of eligibility for ADF district allowance. The change provides that a member on a flexible service determination continues to be eligible for the allowance while on nonworking periods of 28 days or less. The allowance resumes once a member resumes their pattern of service at the remote location.

Section 8 omits and substitutes subsection 4.4.19.1 of the Principal Determination, which provides that a member is eligible for Port Wakefield allowance if posted to the establishment and must live there. A new subsection 4.4.19.1A is inserted to provide that the allowance is not payable during nonworking periods that exceed 28 days under a member's flexible service determination.

Section 9 omits and substitutes subsection 4.4.32.1 of the Principal Determination, which provides that a member is eligible for Antarctic allowance from the day of embarkation until the day of disembarkation. A new subsection 4.4.32.1A is inserted to provide that the allowance is not payable during a nonworking period that exceeds 28 days under a member's flexible service determination.

Section 10 omits subsection 4.6.6.3 of the Principal Determination, which provided for eligibility to executive vehicle allowance for a star rank member of the Reserves. This allowance is part of the remuneration package implemented for star rank members. The eligibility condition for a member of the Reserves has been incorporated in subsection 4.6.6.4 consequential upon the commencement of section 11 of this Determination.

Section 11 omits and substitutes subsection 4.6.6.4 of the Principal Determination, which provides the pro-rata payment of executive vehicle allowance to certain categories of members, including a member on part-time leave without pay. The substituted subsection reflects the removal of provisions for a member on part-time leave without pay. A cross reference to the section that provides the method for calculating prorated amounts of allowance is provided.

Section 12 omits and substitutes the note under subsection 4.6.6.6 of the Principal Determination. The section provides the rates of executive vehicle allowance for a member who temporarily holds a rank for a period of four weeks or more. The note provided that for a member of the Reserves, the four week period may include any period the member is not required for duty. Section 12 amends the note to provide that the same condition applies to a nonworking period for a member on a flexible service determination.

Section 13 inserts subsection 4.8.7.3 into the Principal Determination and provides that a trainee on a flexible service determination is to be paid trainee's dependant allowance on a pro rata basis.

Schedule 5 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 5 makes amendments to Chapter 5 of the Principal Determination. Chapter 5 sets out the provisions for the various kinds of leave available to ADF members.

Section 1 omits and substitutes section 5.2.4 of the Principal Determination, which provides for a member who Division 1: Leave travel to a restricted destination applies to. The new provision has been clarified to make it more readable for the administrator.

Section 2 amends paragraph 5.3.2.a of the Principal Determination, which provides that a member of the Permanent Forces is eligible to apply for a paid medical absence from duty. An exception has been inserted which provides that a member the Part does not apply to a member on a flexible service determination during a nonworking period.

Section 3 omits section 5.3.10A of the Principal Determination, which provided conditions relating to the grant of a medical absence for a member who is on a flexible service determination (weeks per month pattern of service). This has now been provided for under paragraph 5.3.2.a of the Principal Determination which provides that members of the Permanent Forces (this includes members on a flexible service determination) are eligible to apply for a paid medical absence from duty during their working periods.

Section 4 amends the definition for 'non-effective service' in section 5.4.6 of the Principal Determination, which provides the types of situations that would no count as effective service for the purposes of recreation leave. A nonworking period has been added to the list of situations. This would only apply to a member on a flexible service determination.

Section 5 omits and substitutes section 5.4.8 of the Principal Determination, which provides the following.

- How much basic recreation leave a member may accrue in a leave year.
- When a member receives their basic recreation leave credit.
- How to calculate a member's fortnightly basic recreation leave accrual credit.
- How part-time leave without pay affects a member's basic recreation leave accrual.

The section has been amended to remove reference to part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. A formula has been inserted which provides how basic recreation leave is calculated for a fortnight.

Section 6 amends section 5.4.13 of the Principal Determination, which provides who is eligible for additional recreation leave credits for sea service, and the rate which it accrues. The section has been amended to provide a formula which is used to calculate a member's fortnightly additional recreation leave credit. The new formula provides for a member who is on a flexible service determination.

Section 7 amends section 5.4.15 of the Principal Determination, which provides who is eligible for additional recreation leave credits for flight duties, and the rate which it accrues. The section has been amended to provide a formula which is used to calculate a member's fortnightly additional recreation leave credit. The new formula provides for a member who is on a flexible service determination.

Section 8 amends section 5.4.16 of the Principal Determination, which provides who is eligible for additional recreation leave credits for special service, and the rate which it accrues. The section has been amended to provide a formula which is used to calculate a member's fortnightly additional recreation leave credit. The new formula provides for a member who is on a flexible service determination.

Section 9 amends section 5.4.17 of the Principal Determination, which provides the conditions a member must meet to be eligible for additional recreation leave credits for service in a remote location. The section further provides the rate of accrual. The section has been amended to provide a formula which is used to calculate a member's additional recreation leave credit, depending on the location, for service in the remote location. The new formula provides for a member who is on a flexible service determination.

Section 10 amends subsection 5.4.22.4 of the Principal Determination, which provides that a member may purchase recreation leave credits up to a maximum of 20 days per financial year. The subsection note has been amended to remove reference to part-time leave without pay and leave without pay (flexible service determination) and replace these types of leave with a flexible service determination. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 11 amends subsection 5.4.24.4 of the Principal Determination, which provides that a member's fortnightly payment for purchased recreation leave credits is not reduced for a member on part-time leave without pay or leave without pay (flexible service determination). The subsection has been amended to remove the reference to part-time leave without pay and leave without pay (flexible service determination) and replace these types of leave with a flexible service determination. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. A note has also been inserted which provides a reference to where a member can find provisions relating to making payments during a nonworking period.

Section 12 omits and substitutes section 5.4.29 of the Principal Determination, which provides that a member on part-time leave without pay or on a flexible service determination is not eligible for trainee leave. The new section provides that a member on a flexible service determination is only eligible for trainee leave during the member's pattern of service.

Section 13 omits and substitutes section 5.4.33 of the Principal Determination, which provides how recreation leave is granted. The section has been amended to provide how a supervisor may grant recreation leave to a member on a flexible service determination.

Section 14 omits and substitutes section 5.4.33A of the Principal Determination, which provide the order in which a member's recreation leave credits are reduced. The section has been amended to provide that a member's recreation leave credit is reduced by the number of days for which recreation leave is granted, this may be a part day for a member on a flexible service determination.

Section 15 and 16 amend subsections 5.5.6.5 and 5.5.6.7 of the Principal Determination, which provides administrative concepts relating to long service leave. Subsection 5.5.6.5 has been amended to clarify that a member's long service leave credits are reduced by every calendar day in the member's leave period. Subsection 5.5.6.7 has been amended to provide that a member's long service leave cannot commence on a nonworking day.

Section 17 omits and substitutes section 5.5.8 of the Principal Determination, which provides how a member's long service leave entitlement is calculated. The section has been amended to provide for a member on a flexible service determination. The section now provides a formula for calculating a member's long service leave credit for a year of accrued service. The heading of section 5.5.8 has been amended to clarify what the section provides.

Section 18 omits and substitutes the exception and cross reference note in subsection 5.5.9.1 of the Principal Determination, which provides that the CDF may grant a member a period of long service leave up to the member's long service leave credit. The exception has been amended to remove reference to part-time leave without pay and leave without pay (flexible service determination) and replace these types of leave with a flexible service determination. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. The cross reference note has been amended to reflect the new heading of subsection 5.5.8 which has been amended by section 17 of this Determination.

Section 19 amends the table in subsection 5.5.26.2 of the Principal Determination, which provides how a member calculates their payment of long service leave when the member ceases continuous full time service. Table item 2 has been amended to remove reference to the table in section 5.5.8 of the Principal Determination. This table has been removed by section 17 of this Determination.

Section 20 omits and substitutes subsection 5.5.26.3, which provides how a member is to work out a long service leave credit for completed months of accrued service. The subsection has been amended to provide a formula which is used to calculate how a member who is on a flexible service determination calculates their long service leave credit for completed month of accrued service based on their pattern of service.

Sections 21 and 22 amend paragraph 5.6.14.1.b of the Principal Determination, which provides that paid maternity leave does not apply to a member on a flexible service determination (weeks per month pattern of service). The paragraph has been amended to remove reference to weeks per month pattern of service. The see note has been removed as the information relating to maternity leave for members on a flexible service determination is now included in the new subsection 2A, inserted by section 23 of this Determination.

Section 23 omits and substitutes subsection 5.6.14.2 of the Principal Determination, which provides a members entitlement to paid maternity leave. A new subsection has been inserted to provide a members entitlement to paid maternity leave while on a flexible service determination.

Section 24 omits section 5.6.14A of the Principal Determination, which provides a members entitlement to paid maternity leave for a member who is on a flexible service determination (weeks per month pattern of service). This has now been provided for under section 5.6.14.2A of the Principal Determination which has been inserted under section 23 of this Determination.

Section 25 omits and substitutes section 5.6.15 of the Principal Determination, which provides that a member who is eligible for paid maternity leave may take the leave at half pay. The new section provides that a member on a flexible service determination may also take their paid maternity leave at half pay.

Section 26 omits subsection 5.6.20.5 of the Principal Determination, which provided that when a member, who is on part-time leave without pay or a flexible service determination (weeks per month pattern of service), applies to resume duty after a required absence of maternity leave, the member must include their application for part-time leave without pay or for a flexible service determination with their application to resume duty. This is no longer a requirement.

Section 27 omits section 5.6.33 of the Principal Determination, which provides that a member who is on part-time leave without pay immediately before their maternity leave begins, and it was reasonable to expect that the member would have continued their part-time leave without pay arrangement if the member had not have taken maternity leave, will receive salary at the part-time rate as if the member has continued on the part-time leave without pay arrangement until it would have ended. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. This has been provided for under subsection 5.6.14.2 of the Principal Determination which has been amended by section 23 of this Determination.

Section 28 inserts subsection 5.7.3.1A into the Principal Determination. The new subsection provides that if a member on a flexible service determination is granted paid parental leave, the member's nonworking period continues to apply during the period of leave.

Section 29 amends section 5.7.9 of the Principal Determination, which provides that a member who returns from parental leave may apply to resume on part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. These arrangements will remain in place during the member's paid parental leave.

Section 30 amends subsection 5.8.7.1 of the Principal Determination, which provides that at the end of a period of war service leave a member's war service leave credit must be reduced by the number of days' leave granted. Saturdays, Sundays and public holidays are not counted. The subsection has been amended to include nonworking periods as periods which are not counted when reducing a member's war service leave credit.

Section 31 inserts a new section 5.9.6 into the Principal Determination. The new section provides that if a member is on a flexible service determination, leave under Part 9 Division 1 can only be taken during the member's pattern of service.

Section 32 amends section 5.10.2 of the Principal Determination to remove reference to Division 2, part-time leave without pay and Division 3, part-time leave without pay for member overseas. These are no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 33 amends section 5.10.5A of the Principal Determination, which provides that a member who is on a flexible service determination (weeks per month pattern of service) is taken to be on leave without pay during their nonworking period. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 34 amends subsection 5.10.6.1 of the Principal Determination, which provides that a member who is granted leave without pay under Chapter 5 Part 10 Division 1 of the Principal Determination is not eligible for an allowance during the period of leave without pay. A member on leave without pay (flexible service determination) is an exception to this rule. The subsection has been amended to remove the exception as this is no longer required.

Section 35 omits Chapter 5 Part 10 Division 2 of the Principal Determination, which provided part-time leave without pay for a member on continuous full-time service. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 36 omits Chapter 5 Part 10 Division 3 of the Principal Determination, which provided part-time leave without pay for a member overseas. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 37 omits and substitutes section 5.11.5 of the Principal Determination, which provides when a decision maker may grant a member short absence from duty. The section has been amended to provide that a member on a flexible service determination can only be granted a short absence from duty during the member's pattern of service.

Schedule 6 amends the Defence Determination 2016/19, *Conditions of service*

Section 1 amends section 6.5.5 of the Principal Determination, which provides circumstances where a member is not eligible for a removal at Commonwealth expense. Paragraphs 6.5.5.f and 6.5.5.g have been inserted to clarify that a member on a flexible service determination is not eligible for a removal at Commonwealth expense if the member chooses to vacate, or return to, their accommodation in the posting location during a nonworking period.

Schedule 7 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 7 makes amendments to Chapter 7 of the Principal Determination. Chapter 7 sets out the provisions for housing and meals available to ADF members.

Section 1 omits and substitutes section 7.1.7 of the Principal Determination, which provides that a member is not eligible for an allowance or reimbursement under the Chapter for any period when the member is not entitled to salary, unless authorised under another relevant provision, such as section 5.10.6. The new section is to clarify that a member is not eligible for an allowance or reimbursement under the Chapter for any period when the member is not entitled to salary, except where a member is on a flexible service determination or where the CDF approves a payment under subsections 7.8.34.3 or 5.10.6.2.

Section 2 amends the table in section 7.1.14 of the Principal Determination, which provides defined terms which are used in Chapter 7 of the Principal Determination. The table has been amended to include definitions for "Incomplete cycle" and "Member's cycle".

Section 3 omits and substitutes paragraph 7.1.22.1.c of the Principal Determination, which provides that the CDF may approve a house-hunting trip for a member if satisfied that the relevant conditions have been met. The new paragraph provides that a member is required to have been granted leave or be on a nonworking period to meet the required condition for CDF approval.

Section 4 omits and substitutes paragraph 7.3.12.1.c of the Principal Determination, which provides that for a member to be eligible for the home purchase assistance scheme, the member is expected to serve for 12 months at the location where the member has purchased the home. The new paragraph removes reference to part-time leave without pay. This is no longer required, as part-time leave without pay arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 5 omits section 7.4.26 of the Principal Determination, which provided the contribution a member on part-time leave without pay must pay for living-in accommodation. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 6 amends subsection 7.4.27.1 of the Principal Determination, which provides the rates that a member who is granted leave without pay must pay for living-in accommodation. The subsection has been amended to remove a member who has been granted part-time leave without pay or leave without pay (flexible service determination) as a member the section does not apply to. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 7 omits and substitutes section 7.4.27A of the Principal Determination. The section provides the rate of contribution for a member on a flexible service determination, who has nonworking periods that exceed 28 continuous days or 130 or more nonworking period days for each full year, pro-rated. The section further provides the contribution rate for a member whose pattern of service changes and the member has an incomplete cycle. The section provides that the member's contribution rate will be recalculated based on the member's nonworking period for the incomplete cycle. The section also provides that the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for living-in accommodation. It specifies that a member will not be required to repay any amount to the Commonwealth where the contribution is increased. The section also inserts the following new sections into the Principal Determination.

- Section 7.4.27B provides for a member with dependants (unaccompanied) on a flexible service determination and the contributions a member must make for their living-in accommodation during their nonworking period. The section provides that if a member's pattern of service changes, the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for a living-in accommodation.

- Section 7.4.27C provides for a member on a flexible service determination if the flexible service determination ends early. The section provides the contribution rates a member must pay if the member has an incomplete cycle. The section also provides the contribution rate that the member must be reimbursed if the flexible service determination was ended for Service reasons.

Section 8 omits and substitutes paragraph 7.4.32.1.b of the Principal Determination, which provides that a member with dependants (unaccompanied) does not have to pay for living-in accommodation. The new provision includes a member with dependants (unaccompanied) who is not on a flexible service determination as a group of members who do not pay a contribution to live in.

Section 9 inserts two new items in the table in subsection 7.6.41.2 of the Principal Determination, which provides that a member who holds a Service residence or rent band home must make a contribution towards the cost of rent for that accommodation. The new item 5 provides that a member with dependants (unaccompanied) only has to pay a contribution if their dependants live in a Service residence. The new table item 6 provides that a member with dependents (unaccompanied) must also pay a contribution for a surplus Service residence, or rent band choice home, that the member lives in at the gaining location if the member is on a flexible service determination and is on a nonworking period.

Section 10 omits and substitutes subsection 7.6.50.2 of the Principal Determination, which provides the types of leave a member can be granted and remain eligible for to live in a service residence. The new provision removes part-time leave without pay and leave without pay (flexible service determination) from the list of leave types. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 11 omits section 7.6.51 of the Principal Determination, which provided the rate of contribution a member on part-time leave without pay must pay towards the cost of a Service residence. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 12 omits and substitutes section 7.6.55A of the Principal Determination. The section provides for a member on a flexible service determination and the rate of contribution the member is required to make for a Service residence or rent band choice home. The section further provides the contribution rate for a member whose pattern of service changes and the member has an incomplete cycle. The section provides that the member's contribution rate will be recalculated based on the member's nonworking period for the incomplete cycle. The section also provides that the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for a Service residence or rent band choice home. It specifies that a member will not be required to repay any amount to the Commonwealth where the contribution is increased. The section also inserts the following new sections into the Principal Determination.

- Section 7.6.55B provides for a member with dependants (unaccompanied) on a flexible service determination and the contributions a member must make for a surplus Service residence during their nonworking period. The section provides that if a member's pattern of service changes, the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for a Service residence or rent band choice home.
- Section 7.6.55C which provides for a member on a flexible service determination if it ends early. The section provides that the member must pay a contribution if the member requested that the flexible service determination be ended. The section also provides the contribution rate that the member must be reimbursed if the flexible service determination was ended for Service reasons.

Section 13 omits and substitutes item 4 of the table in subsection 7.7.14.2 of the Principal Determination, which provides the fortnightly rent contribution a member is required to make towards their accommodation. The new table item 4 provides for a member with dependants (unaccompanied) not on a flexible service determination and the contribution the member must make for the accommodation depending upon whether the accommodation is at or above the member's rent ceiling. New table item 5 provides for a member with dependants (unaccompanied) on a flexible service determination and the contribution the member must make for the accommodation at the gaining location.

Section 14 omits and substitutes section 7.7.14A of the Principal Determination, which provides the contribution rates for a member on a flexible service determination who is required to make a contribution for rent. The section further provides the contribution rate for a member whose pattern of service changes and the member has an incomplete cycle. The section provides that the member's contribution rate will be recalculated based on the member's nonworking period for the incomplete cycle. The section also provides that the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for rented accommodation. It specifies that a member will not be required to repay any amount to the Commonwealth where the contribution is increased. The section also inserts the following new sections into the Principal Determination.

- Section 7.7.14B provides for a member with dependants (unaccompanied) on a flexible service determination and the contributions a member must make for rented accommodation during their nonworking period. The section provides that if a member's pattern of service changes, the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for rented accommodation.
- Section 7.7.14C provides for a member on a flexible service determination if it ends early. The section provides the contribution rates a member must pay if the member has an incomplete cycle. The section also provides the contribution rate that the member must be reimbursed if the flexible service determination was ended for Service reasons.

Section 15 omits and substitutes section 7.7.18 of the Principal Determination, which provides for when a member is exempt from having to pay a contribution for accommodation provided under Chapter 7 Part 7 of the Principal Determination. The new provisions provide that a member without dependants is exempt from making contributions. The provision that a member without dependants (unaccompanied) is only required to make a contribution for accommodation that their dependants live in has been removed as these provisions have been included in section 7.7.14 which has been amended by section 13 of this Determination.

Section 16 omits and substitutes subsection 7.7.19.2 of the Principal Determination, which provides the types of leave a member can be granted while remaining eligible for accommodation under Chapter 7 Part 7 of the Principal Determination. Part-time leave without pay and leave without pay (flexible service determination) have been removed from the list of leave types. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 17 omits section 7.7.20 of the Principal Determination, which provided the rate of contribution a member on part-time leave without pay must pay towards the cost of the accommodation. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 18 omits and substitutes subsection 7.8.17.1, which provides the contribution a member with dependants (unaccompanied) must pay towards the cost of a rented home. A new subsection 1A has been included to provide that a member on a flexible service determination who is on a nonworking period must pay a rent contribution for a rented home the member lives in at a gaining location.

Section 19 inserts section 7.8.18A into the Principal Determination, which provides the rate of contribution for a member on a flexible service determination, who has nonworking periods that exceed 28 continuous days or 130 or more nonworking period days for each full year, pro-rated. The section further provides the contribution rate for a member whose pattern of service changes and the member has an incomplete cycle. The section provides that the member's contribution rate will be recalculated based on the member's nonworking period for the incomplete cycle. The section also provides that the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for rented accommodation. It specifies that a member will not be required to repay any amount to the Commonwealth where the contribution is increased. The section also inserts the following new sections into the Principal Determination.

- Section 7.8.18B provides for a member with dependants (unaccompanied) on a flexible service determination and the contributions a member must make for a rented home at the gaining location during their nonworking period. The section provides that if a member's pattern of service changes, the member must be reimbursed the difference between the rate that the member has paid from the start of the incomplete cycle and the rate of contribution that the member paid for rented accommodation.
- Section 7.8.18C provides for a member on a flexible service determination if it ends early. The section provides the contribution rates a member must pay if the member has an incomplete cycle. The section also provides the contribution rate that the member must be reimbursed if the flexible service determination was ended for Service reasons.

Section 20 omits and substitutes subsection 7.8.34.2 of the Principal Determination, which provides the types of leave a member can be granted and remain eligible to live in a service residence. The new provision removes part-time leave without pay and leave without pay (flexible service determination) from the list of leave types. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 21 omits section 7.8.35 of the Principal Determination, which provided the rate of contribution a member on part-time leave without pay must pay if the member moves to other suitable accommodation. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 22 inserts a new exception into paragraph 7.9.5.2.b into the Principal Determination. The paragraph provides that a member with dependants (unaccompanied) who is not receiving food allowance does not pay a casual meal allowance. The new exception provides that a member with dependants (unaccompanied) on a flexible service determination is required to pay the casual meal charge during a nonworking period.

Section 23 omits and substitutes the table in subsection 7.9.5.3 of the Principal Determination, which provides the casual meal charge rate depending on a member's circumstance at the time the member eats a meal in a mess. The table has been amended to remove reference to part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Section 24 amends paragraph 7.9.6.1.c of the Principal Determination, which provides that a member on part-time leave without pay may elect to pay the fortnightly meal charge. The paragraph has been amended to remove reference to part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination. These members are now covered under subsection 7.9.8.2 of the Principal Determination.

Section 25 omits and substitutes paragraph 7.10.4.1.b of the Principal Determination. The paragraph provides the amount that a member may be reimbursed, per fortnight, for utilities under section 7.10.3. The new paragraph provides for a member on a flexible service determination and how to calculate the amount of reimbursement for utilities.

Section 26 amends subsection 7.10.9.1 of the Principal Determination, which provides the contribution a member must make for utilities if the member lives in. The subsection has been amended to provide that if a member is on a flexible service determination their contribution is worked out under section 7.10.9A of the Principal Determination.

Section 27 inserts a new section 7.10.9A into the Principal Determination. The new section provides for a member on a flexible service determination who lives in and the conditions the member must meet and how to calculate a member's fortnightly utilities contribution for their nonworking days.

Schedule 8 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 8 makes amendments to Chapter 9 of the Principal Determination. Chapter 9 sets out the provisions for travel in Australia for ADF members.

Section 1 omits and substitutes paragraph 9.3.29.1.d of the Principal Determination, which provides a condition which a member must meet to be eligible to apply for reunion travel. The paragraph has been amended to include additional criteria that may apply to a member, including that a member on a flexible service determination may be on a nonworking period for the duration of the reunion visit.

Section 2 inserts a note at subsection 9.3.30.5 of the Principal Determination, which provides that a member's eligibility for recreation leave travel, remote location leave travel and reunion travel is limited to a combined total of seven trips per year. The note clarifies that the maximum number of annual reunion visits a member on a flexible service determination may apply for is reduced under section 9.3.30A.

Section 3 inserts section 9.3.30A into the Principal Determination. The new provision provides the eligibility for reunion travel benefits for a member on a flexible service determination. The number of reunion visits per year is reduced on a prorated basis and a formula is included to clarify how the percentage of a member's normal full time duty is calculated. The new provision also provides how to recalculate the benefit if a member's flexible service determination is varied or terminated or if the member's pattern of service is varied.

Schedule 9 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 9 makes amendments to Chapter 10 of the Principal Determination. Chapter 10 sets out the provisions for clothing and effects for ADF members.

Section 1 inserts a note into section 10.1.4 of the Principal Determination, which provides the annual rates of uniform allowance. The note provides that the method for calculating the daily rate of the allowance is provided in Chapter 3 Part 2 Division 1. A 'See' note has been inserted to provide a reference to sections 3.2.7 and 3.2.7A of the Principal Determination.

Section 2 omits section 10.1.5 of the Principal Determination, which provided that a member on a flexible service determination (weeks per month pattern of service) may be paid uniform allowance for the days in a member's pattern of service. This has been omitted as it is now addressed in section 3.2.7A of the Principal Determination.

Schedule 10 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 10 makes amendments to Chapter 11 of the Principal Determination. Chapter 11 sets out the provisions dealing with ADF related compensation for ADF members.

Section 1 omits and substitutes subsection 11.3.3.2 of the Principal Determination, which provides the conditions a member must meet for the member's dependant to be eligible to receive a bereavement payment when a member dies due to Service reasons. The new provision includes a member being on a flexible service determination as one of the conditions that may be satisfied for a member's dependant to be eligible for a bereavement payment.

Section 2 omits and substitutes subsection 11.3.3.3 of the Principal Determination, which provided that the CDF must authorise a bereavement payment of four times the member's gross fortnightly pay to a member's dependant. The new provision provides that if a member is on a flexible service determination at the time of their death the amount payable is four times the member's gross fortnightly pay that would have been payable if the member did not have a flexible service determination in effect. A 'See' note is inserted to provide a reference to section 1.6.4 of the Principal Determination.

Schedule 11 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 11 makes amendments to Chapter 14 of the Principal Determination. Chapter 14 sets out provisions dealing with relocating to or from long-term posting overseas for ADF members.

Section 1 omits and substitutes section 14.1.2 of the Principal Determination, which provides the class of members which Chapter 14 applies to. The section has been amended to remove reference to members who are on part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Schedule 12 amends the Defence Determination 2016/19, *Conditions of service*

Schedule 12 makes amendments to Chapter 15 of the Principal Determination. Chapter 15 sets out provisions dealing with living and working on long-term posting overseas for ADF members.

Section 1 omits and substitutes section 15.1.2 of the Principal Determination, which provides the class of members which Chapter 15 applies to. The section has been amended to remove reference to members who are on part-time leave without pay. This is no longer required as arrangements for a member of the Permanent Forces who renders flexible service will be implemented through the making of a flexible service determination.

Schedule 13

Schedule 13 contains transitional and savings arrangements for ADF members that have part-time leave without pay arrangements in place under the Principal Determination immediately before the commencement of this determination.

Section 1 applies to a member who was on part-time leave without pay immediately before the commencement of this determination. The section provides that these members are not affected by the amendments made by this determination. This provision will allow the member to continue with the conditions of service that are in place before the commencement of the Schedules so that they will not be adversely affected by the amendments. The current arrangements have a nominal expiry date of 31 December 2018, at which time the member will be able to choose whether they wish to make a flexible service determination or return to full-time duty.

Section 2 applies to a member who was on part-time leave without pay immediately before the commencement of this Schedule. The section provides that a member will be eligible for any increase in benefits that are made following the commencement of this Schedule. Additionally, a member will be required to pay an increased contribution towards a benefit if the contribution rates are changed following the commencement of this Schedule.

Statement of Compatibility with Human Rights

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

Defence Determination, Conditions of Service Amendment (Flexible Service Determination) Determination 2018 (No. 15)

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 amends Defence Determination 2016/19, Conditions of service.

The purpose of this Determination is to set out the administration of pay and conditions of service for members of the Permanent Force who choose to undertake flexible service. Flexible service allows permanent members to contribute to ADF capability while undertaking a pattern of service that is other than full-time service. The authority for a member to undertake flexible service is given by a Flexible Service Determination pursuant to subsection 23(2) of the *Defence Act 1903*.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

The protection of a person's right to just and favourable working conditions engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 recognises the right to just and favourable conditions of work including remuneration which provide for fair wages, equal pay for equal work and a decent living for the person and their families. The administration of pay and conditions set out under this Determination are consistent with these rights.

Legitimate objective – a member's eligibility to conditions of service is unaffected by flexible service: A member on flexible service remains eligible to conditions of service benefits which compensate for the disabilities associated with Service life. The continued provision of these benefits is consistent with the right to remuneration which provides for a decent living for a person and their family.

Legitimate objective – pro-rata payment of salary and salary related allowances: Members on flexible service will have their salary pro-rated. The pro-rata payment of salary and salary related allowances in proportion to a member's pattern of service is reasonable, proportionate and fair.

Legitimate objective – pro-rata payment of some allowances: Members on flexible service will have some allowances pro-rated. This includes district allowance, uniform allowance, executive vehicle allowance and accommodation assistance. Pro-rating the payment of these allowances in proportion to a member's pattern of service is reasonable, proportionate and fair.

Legitimate objective – pro-rata accrual of leave benefits: Members on flexible service will accrue leave on a pro-rata basis. The pro-rata accrual of recreation leave, additional recreation leave and long service leave credits in proportion to a member's pattern of service is reasonable, proportionate and fair.

Legitimate objective – extension of return of service obligations: Members subject to a return of service obligation will have their obligation extended when they undertake flexible service. If a member has been paid additional remuneration to serve a specified period of full-time service, should the member choose to render that service on other than a full-time basis, it is fair and reasonable that the period of service be extended.

Conclusion

This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, proportionate and fair.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions