

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Overseas education assistance) Determination 2020 (No. 26)

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

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003* (Legislation Act). These instruments are also subject to the interpretation principles in the AI Act.

This Determination amends the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 14 sets out provisions dealing with relocating to or from long-term posting overseas.
- Chapter 14A sets of benefits provided in response to the COVID-19 pandemic.
- Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

The purpose of this Determination is to update benefits relating to education assistance provided to members who are on long-term postings overseas for their children to ensure that they remain extant and fit for purpose. The amendments primarily affect Chapter 15 Part 6 of the Principal Determination and are a consequence of a review of that Part. The underlying benefits largely remain unchanged. The style and organisation of the Part have been contemporised.

The Determination also adds additional benefits for members posted to Cherbourg, France, enabling their children to attend boarding school at the Ermitage International School of France and adds a benchmark school for Laos, a new posting location and extends the duration of education assistance for the children of members on a long-term posting overseas in the United States of America who remained at the posting location during the COVID-19 evacuations.

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

Section 2 provides that this instrument commences on 7 January 2021.

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

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Overseas education assistance amendments

Section 1 inserts a new definition after section 12.3.9 of the Principal Determination. Section 12.3.9A defines ‘most economic means’, which is used in the context of determining travel benefits in Chapter 15 Part 3 and Part 6.

Section 2 amends section 12.3.15 of the Principal Determination which provides the definition of posting location for Chapters 12 to 17 of the Principal Determination. The amendments are made to clarify the posting location for a member who is posted to a position on Manhattan Island, New York. Members who *are required to live on Manhattan Island* have a posting location of Manhattan Island, in comparison to those who are not required to live on Manhattan Island, who have a posting location of New York State.

Section 3 amends section 14.6.13 of the Principal Determination which explains what happens to a member’s education assistance benefits during an evacuation. The amendment rewords subsection 2 and updates the cross references, as a consequence of the amendments made by this Determination. This amendment does not change the rules in this section.

Section 4 amends the note in subsection 14A.1.18.3 of the Principal Determination which explains what happens to a member's education assistance benefits during a COVID-19 evacuation. The amendment rewords the note in the subsection and updates the cross references, as a consequence of the amendments made by this Determination.

Section 5 amends section 14A.1.21A of the Principal Determination which provides education assistance or the children of members on a long-term posting overseas who stayed in the United States of America during the COVID-19 evacuation. The amendment extends the date to subsection 5, which is the date in which the benefit is to end to 30 June 2021. This extends the benefit by 6-months and is consistent with benefits provided by the Department of Foreign Affairs and Trade.

Section 6 omits section 15.1.6 of the Principal Determination which specifies the posting location for a member who is posted to New York and directed to live on Manhattan Island for the purpose of providing education assistance. The section is omitted as the rule is provided in the definition of posting location which is remade by section 6 (as section 15.6.4) of this Determination.

Section 7 amends section 15.3.15B of the Principal Determination which provides a member who is posted to Cherbourg, France with benefits for a person to accompany a child going to, or returning from, boarding school at St. John's College, Southsea, England. The section is omitted and remade updating the drafting style of the section and inserting the Ermitage International School as a new boarding school. The underlying benefits provided by this section are not changed.

Section 8 omits the see note in subsection 15.3.16.1 of the Principal Determination which provides a cross reference to education assistance provided for members posted to Cherbourg, France.

Section 9 omits Chapter 15 Part 6 of the Principal Determination which provides education assistance to members on a long-term posting overseas who have a child attending school, either in Australia or at the posting location. The amendment reorders the rules, as appropriate, and contemporises the Part. This amendment is made as a consequence of a review of the extant rules in the Principal Determination to ensure that they are fit for purpose. Specifically, the amendment does the following:

Division 1 makes general rules that apply across the Part.

- Section 15.6.1 provides the purpose of the Part.
- Section 15.6.2 specifies who the Part applies to, specifically a member on a long-term posting overseas who has a child who is more than 3 years old and is enrolled full-time in various levels of schooling or education. This does not reflect a change in policy.
- Section 15.6.3 prevents the member from receiving benefits under this Part if the member is receiving education assistance benefits under Chapter 8 Part 4. This is to prevent the member receiving 2 benefits that are similar in purpose. This does not reflect a change in policy.
- Section 15.6.4 provides definitions for 'compulsory tuition fees', 'benchmark schools' and 'posting location'. These changes do not change the definitions, but contemporise the drafting style and provide additional clarity. This does not reflect a change in policy.
- Section 15.6.5 specifies how benefits are provided to members. The default method for paying members is either by way of reimbursement to the member or payment directly to the service provider. This applies unless another method is specified, usually by specifying that the benefit is a reimbursement. Reimbursements may be provided for part benefits if the underlying cost is paid by instalments. This reverses this existing default and appropriate amendments have been made to the benefits provided in this Part as required.
- Section 15.6.6 provides an obligation on a member to repay a benefit received for a service if the member is provided a refund by the service provider for that service. This does not reflect a change in policy.

Division 2 provides education assistance benefits for children who are at the member's posting location.

- Section 15.6.7 specifies who the Division applies to, specifically a member whose child is attending a school at the member's posting location overseas. This does not reflect a change in policy.

- Section 15.6.8 provides a benefit to members to cover initial enrolment fees that may be charged by their child's school. This does not reflect a change in policy.
- Section 15.6.9 provides a member with a benefit to cover all or part of the costs of a child having to sit a compulsory examination for the purpose of being admitted to a school. The maximum benefit is the fee for a compulsory examination that is charged by a benchmark school in the member's posting location. This does not reflect a change in policy.
- Section 15.6.10 provides a member a benefit to cover all or part of compulsory tuition fees charged by their child's school. The amount the member is eligible for is dependent on the child's schooling situation and whether the child is attending a benchmark school. This amendment includes children attending junior college in the USA, replacing the need for a separate benefit to be provided, as it currently is in section 15.6.17 of the Principal Determination. This does not reflect a change in policy.
- Section 15.6.11 requires a member who received a benefit under the new section 15.6.10 to pay a contribution. The amount of the contribution is dependent on the school level the child is attending. This does not reflect a change in policy.
- Section 15.6.12 provides a member with a benefit to cover part or all of the costs of a child's transport to and from school. The premise of the benefit is that the member is responsible for the first AUD 383.10 of the transport costs, which reflects the costs they would pay for a student to travel to and from school in Australia over a 12-month period, and the member will be eligible for the remaining costs. This does not reflect a change in policy.
- Section 15.6.13 provides for a member to be eligible for the reasonable cost of tuition to assist their child to learn a new language or form of communication that is used to teach in the classes the child attends. The CDF must be satisfied that the tuition is necessary to aid the child's education. This does not reflect a change in policy.
- Section 15.6.14 provides a member with the cost of up to 200 hours of remedial tuition a year if the CDF is satisfied that the tuition is necessary having regard to a number of specified criteria relating to the child's education process, and whether the cost of the tuition is reasonable. If the cost of the tuition is not reasonable, the member would not be eligible for the benefit. This does not reflect a change in policy.
- Section 15.6.15 enables a member to receive a benefit towards the costs of their child attending a summer school or camp for up to 3 weeks if the member is posted to France or 4 weeks if the member is posted to another country. The benefit covers the costs of the child attending an approved summer school. If the child is unable to attend an approved summer school due to COVID-19 restrictions, the amount is limited to AUD 135 a day. The benefit is not available to members who are posted to the United States of America; separate benefits are provided for them in Division 3. This does not reflect a change in policy.
- Section 15.6.16 provides specific benefits for a member who is directed to live on Manhattan Island and has a child for whom they receive child supplement allowance and attends a summer camp in the United States of America. The member is eligible for the mandatory fees charged by the summer camp up to a maximum specified amount. This does not reflect a change in policy.
- Section 15.6.17 provides rules for the repayment of benefits received if the member was receiving education assistance for their child in Australia who subsequently moves to the member's posting location and is eligible for education assistance. The purpose of this is to prevent a member from benefiting from more than one form of education assistance for the same period, which is particularly relevant when compulsory tuition fees are paid in advance. This does not reflect a change in policy.

Division 3 provides education assistance for children who are at the member's posting location in special circumstances.

- Section 15.6.18 provides an alternative form of education assistance to a member if the benchmark school at the member's posting location cannot provide adequate education services for the member's child. The benefit enables the child to attend school in the member's posting location by correspondence, for which the member is eligible for up to the amount they would

have received under section 15.6.10, or to attend school in another overseas location, for which the member is eligible to receive up to what a non-Government school in Australia could provide as adequate education services for the child. A member cannot receive education assistance under this section and section 15.6.10 at the same time for the same child. This does not reflect a change in policy.

- Section 15.6.19 provides a travel benefit to a member for the costs of a child who was attending a school in the member's posting location and subsequently leaves the posting location to attend another school either in Australia or in another location. If the child returns to Australia, the benefit is the allowable travel costs from the posting location to the school or the actual cost of the travel, if lesser. If the child is going to another country, the benefit is the allowable travel costs from the posting location to the school, the allowable travel costs from the posting location to the member's previous posting location in Australia, or the actual cost of the travel, whichever is the lesser amount. This does not reflect a change in policy.
- Section 15.6.20 provides an additional benefit for a member or their partner to accompany their child to the place where the child is to attend boarding school and to return to the member's posting location overseas. This is only available in limited circumstances and only once during an overseas posting for each child. Travel costs provided under this benefit are limited to the lesser of the cost of the travel or, if the school is in Australia, the allowable travel costs between the member's posting location and the school's location, or if the school is not in Australia, the allowable travel costs between the member's posting location and the member's last posting location in Australia. This does not reflect a change in policy.
- Section 15.6.21 provides education assistance for members who are posted to Cherbourg, France and whose child is either enrolled in year 10 or higher or a lower schooling level in exceptional circumstances. To be eligible for the benefit, the child must be enrolled at St John's College in Southsea, England or Ermitage International School of France in Maison-Laffitte, France. The member must also pay a contribution towards the cost of the education assistance, which is the same as what they would pay if the child attended school in the posting location. A member cannot receive education assistance under this section and section 15.6.10 at the same time for the same child. This does not reflect a change in policy but expands the benefit to include the Ermitage International School of France as an alternative to St John's College.
- Section 15.6.22 provides additional assistance for a member who is eligible for education assistance under section 15.6.21, as amended by this Determination. The member is eligible for the costs of travel between their posting location and the child's school for the child and an adult accompanying the child to travel to and from the posting location to the school for the child to commence and end boarding school. The member is eligible for return travel for the accompanying adult and if the travel cannot be completed in one day, the reasonable costs of accommodation. If another member has received a benefit under this section for a person travelling, the member will not be eligible for the benefit for the same person. For example, a dual service couple posted to Cherbourg are not both eligible for the benefit for the same child, or if a person accompanies children from more than one member at the same time, only one member is eligible for the benefit for the accompanying adult. This is to prevent two benefits being paid for the same trip. A member cannot receive a benefit under this section and section 15.6.22 at the same time for the same child. This does not reflect a change in policy but expands the benefit to include the Ermitage International School of France as an alternative to St John's College.

Division 4 provides education assistance benefits for children in Australia.

- Section 15.6.23 specifies who this Division applies to, specifically members on a long-term posting overseas who have a child who is a dependant and is enrolled in a form of education in Australia. The child must also live away from the member's family home in Australia. This does not reflect a change in policy.
- Section 15.6.24 provides that the Division does not apply to a member who has a partner who resides in Australia unless the CDF is satisfied that it is reasonable in the circumstances to provide education assistance with respect to a child. The CDF may decide it is reasonable to provide education assistance if, for example, the partner is unable to provide day-to-day care for the child or if there are specific reasons relating to the well-being of the child. This does not reflect a change in policy.

- Section 15.6.25 provides a benefit to members to cover initial enrolment fees that may be charged by their child's school. This does not reflect a change in policy.
- Section 15.6.26 provides a member a benefit to cover all or part of compulsory tuition fees charged by their child's school. The amount the member is eligible for is the cost to the compulsory tuition fees charged by the school up to a specified maximum. The section also requires a member to pay a contribution towards the cost of the child's education. The amount of the contribution is determined by how many years the child has been in the accommodation and if they are staying in private accommodation. This does not reflect a change in policy.
- Section 15.6.27 provides a member a benefit to cover all or part of accommodation costs for the child to board in a boarding school, tertiary institution or another private or commercial establishment. The benefit is the charge of the boarding up to a specified maximum. The maximum benefit differs if the child is living in other private accommodation. The section also requires a member to pay a contribution towards the cost of the child's education. The amount of the contribution is determined by the child's schooling level. This does not reflect a change in policy.
- Section 15.6.28 provides a member with a benefit towards the cost of up to 200 hours of remedial tuition a year if the CDF is satisfied that the tuition is necessary as a consequence of the member's long-term posting overseas. In granting the benefit the CDF must consider the nature of the tuition and matters affecting the child's welfare. The amount of the benefit is the cost of the tuition that is above what the member would have paid if they were in Australia. This does not reflect a change in policy.
- Section 15.6.29 provides rules for the repayment of benefits received if the member was receiving education assistance for their child at the posting location overseas and the child subsequently returns to Australia and is eligible for education assistance. The purpose of this is to prevent a member from more than one form of education assistance for the same period, which is particularly relevant when compulsory tuition fees are paid in advance. This section introduces a corresponding rule for when a child leaves Australia to study in the posting location overseas as provided in section 15.6.10 of the Principal Determination and remade in section 15.6.17 by this Determination.
- Section 15.6.30 specifies when education assistance under Division 4 ends. This occurs on the earlier of a number of events, including: when a parent of the child who is not the member returns permanently to Australia, if the child changes school after the member is posted back to Australia, at the end of the school year after the member is posted back to Australia, or if the child is in their last two years of high school, when they finish high school, or when the child turns 18. This does not reflect a change in policy.

Section 10 omits and substitutes annex 15.6.A of the Principal Determination which lists benchmark schools for specified countries. The amendment is largely technical in nature, inserting item numbers and changing the column headings to reflect the definition in section 15.6.4, as made by this Determination. The amendment also inserts benchmark schools for the new posting location of Laos.

Section 11 omits and substitutes annex 15.6.B of the Principal Determination which lists approved summer schools or specified countries. The amendment is technical in nature, inserting item numbers and changing the column headings to reflect the rule in section 15.6.15, as made by this Determination.

Section 12 amends section 15.7.1 of the Principal Determination which provides the purpose for Chapter 15 Part 7, Foreign language training for spouse or partner. The amendment omits and substitutes the see note to update the cross reference for foreign language and communication training for children.

Schedule 2—Transitional and savings provisions

Section 1 defines 'Defence Determination' for the purpose of this Schedule. It means the Defence Determination 2016/19, Conditions of service, being the Principal Determination, as in force from time to time.

Section 2 provides a benefit for members who enrolled their child at the Ermitage International School in France for the commencement of the 20/21 school year, but before the commencement of this Determination. The benefit is the equivalent of what they would have received if this Determination were

in place at the time they enrolled their child in the school and covers compulsory tuition and boarding fees and the costs of travel for the child and a person to accompany them to commence boarding school.

Section 3 provides a benefit for the continuation of education assistance for members who are posted to the United States of America and were eligible for the benefit before the 31 December 2020. The section enables a member to continue to receive the benefit until section 5 of Schedule 1 commences.

Section 4 provides a savings provision that enables a person to continue receiving a benefit that was approved before the commencement of this Determination, even though the rules may have changed slightly. Members will continue to receive the benefits until a material circumstance on which they were first eligible for the benefit changes.

Decisions that are made under the Principal Determination, as amended by this Determination, may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the *Defence Regulation 2016*. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Before this Determination was made, consultation was undertaken with undertaken with the Directorate of Attaché and Overseas Management and the Overseas Administration Team within the Department of Defence and with the Department of Foreign Affairs and Trade.

The rule maker 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

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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 update benefits relating to education assistance provided to members who are on long-term postings overseas for their children to ensure that they remain extant and fit for purpose. The amendments primarily affect Chapter 15 Part 6 of the Principal Determination and are a consequence of a review of that Part. The underlying benefits largely remain unchanged. The style and organisation of the Part are contemporised. This Determination is mostly technical in nature.

The Determination also adds additional benefits for members posted to Cherbourg, France, enabling their children to attend boarding school at the Ermitage International School of France and adds a benchmark school for Laos, a new posting location and extends education assistance benefits in the United States of America.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

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

Right of the child to education

The protection of a child's right to education is provided in Article 28 of the Covenant on the Rights of the Child. Article 28 requires States to provide access to different types of education. While this Determination is largely technical in nature it remakes existing rules and benefits in a more contemporary style. It advances human rights by providing education assistance for the children of members who are on long-term postings overseas as a part of the ADF's conditions of service package. The Determination ensures that children accompanying members to a posting location are able to attend schools of a similar standard to those in Australia. For children of members who remain in Australia, the Determination ensures that they are able to attend boarding schools to continue their education.

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