

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment (Subject matter) Determination 2021 (No. 11)

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 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 3 which sets out provisions dealing with salaries and bonuses.

Chapter 4 of the Principal Determination sets out provisions dealing with allowances and reimbursements for members of the Australian Defence Force (ADF).

Chapter 5 which sets out provisions dealing with leave.

Chapter 8 which sets out provisions dealing with members of the (ADF) and their dependants.

Chapter 9 which sets out provisions dealing with travel costs in Australia.

Chapter 10 which sets out provisions dealing with clothing and personal effects.

Chapter 11 which set provisions dealing with assistance available if a member of the ADF dies or suffers personal injury or disease as a result of their service.

Chapter 12 which sets out provisions dealing with overseas conditions of service.

Chapter 13 which sets out provisions dealing with short-term duty overseas.

Chapter 14 which sets out provisions dealing with relocating to or from long-term posting overseas for members of the Australian Defence Force (ADF).

Chapter 14A which sets of benefits provided in response to the COVID-19 pandemic.

Chapter 15 which set out provisions dealing with living and working on long-term posting overseas.

Chapter 16 which sets out provisions dealing with overseas hardship locations.

Chapter 17 which sets out provisions dealing with warlike and non-warlike deployments.

The purpose of this Determination is:

- To make technical amendments that promote the use of the correct terminology and bring a number of definitions and provisions into line with contemporary drafting standards. Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.
- To extend salary non-reduction for Army Royal Australian Engineer Geomatic Technicians to 30 June 2022.
- To make routine adjustments to the rates of education assistance. The adjustments are based on changes in the Consumer Price Index, obtained from the Australian Bureau of Statistics, or on advice from an independent data provider. The advice and methodology of the independent data provider cannot be disclosed publicly as the intellectual property belongs to the provider. Disclosure of the advice would be a breach of terms and conditions under which the advice is obtained. All rates in Schedule 1 are Australian Dollars.

- To extend by 1 year the provision of education assistance for the children of members on a long-term posting overseas who stayed in the United States of America during the COVID-19 evacuation consistent with DFAT advice concerning the ongoing impact of COVID-19 on government schools in the United States of America.
- To add a benchmark school for Cherbourg, France to enable education assistance to be provided to members whose children are in pre-school and kindergarten at that location. Recent changes in French law now require children from the age of 3 to attend school. Setting a benchmark pre-school and kindergarten for Cherbourg will enable members to send their children to pre-school and kindergarten at a reduced cost to the member.
- To implement routine annual adjustments to the child supplement allowance and location allowance for a member posted overseas

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

Section 2 provides that this instrument commences on 8 July 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—Miscellaneous amendments

Amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided. Details of the amendments are provided below.

Sections 1 and 2 amend subsections 3.2.36.1 and 3.2.39.1 of the Principal Determination which set out the purpose of section 3.2.36 and 3.2.39. The subsections are amended to change the reference to 'This section describes' to 'The purpose of this section is to set out' to reflect contemporary drafting standards.

Section 3 omits subsection 5.6.11.3 of the Principal Determination which sets out that if different approving authorities are required to sign for different types of leave separate leave forms must be used for each type of leave. The subsection is non-legislative and administrative in nature and is removed.

Section 4 amends subsection 5.6.23.1 of the Principal Determination which provides that Chapter 5 Part 6 Division 3 sets out the period a member must be away from duty owing to their pregnancy. The subsection is amended to change the reference to 'describes' to 'prescribes' to promote the correct use of terminology.

Section 5 amends paragraph 8.3.6.2.a of the Principal Determination which sets out one of the conditions for a member to be categorised as a member with dependants (unaccompanied). The paragraph is amended to change the reference to 'described' to 'set out' to better reflect contemporary drafting standards.

Section 6 and 7 amend subsections 8.9.5.2 and 8.9.5.3 of the Principal Determination which provide that reimbursement under section 8.9.5 is limited to certain out of pocket expenses incurred by an eligible dependant and that certain specialist and allied health services cannot be reimbursed. The subsections are redrafted to reflect contemporary drafting standards.

Section 8 omits section 9.1.2 of the Principal Determination which provides an overview of key travel policies in Chapter 9 Part 1. The section is non-legislative and administrative in nature and is removed.

Section 9 omits and substitutes subsection 9.1.3.4 of the Principal Determination which provides that a member is not eligible for the cost of coach travel for themselves or their dependants if air or rail travel is available unless the CDF is satisfied that certain conditions are met. The subsection is redrafted to reflect contemporary drafting standards.

Sections 10 and 11 amend section 9.2.6 of the Principal Determination which provides that a member travelling on temporary duty by the most economical means is eligible to certain benefits. The section is amended to reflect contemporary drafting standards.

Section 12 omits and substitutes subsection 9.2.35.3 of the Principal Determination which sets out the amount a member is eligible to receive for travel from their posting location or home port for a removal under section 6.5.46. The subsection is redrafted to reflect contemporary drafting standards.

Section 13 omits and substitutes subsection 9.3.5.3 of the Principal Determination which provides that members may travel because of marriage or recognition of a partnership by a means that is not the most economical if the CDF approves it and the member pays the difference in cost before the travel. The amendment redrafts subsection 9.3.5.3 to better reflect contemporary drafting standards, and also adds subsection 9.3.5.4, which inserts text previously provided by subsection 9.3.5.3.

Section 14 omits subsection 9.3.73.5 which provides that the approved visitor may choose to stay in the accommodation provided beyond the approved period at their own cost. The subsection is non-legislative and administrative in nature and is removed.

Section 15 omits subsection 9.3.74.2 from the Principal Determination which provides that if the approved visitor chooses to stay beyond the approved period the cost of meals will not be reimbursed. The subsection is non-legislative and administrative in nature and is removed.

Sections 16 and 17 amend subsections 9.4.27.1 and 9.4.29.1 of the Principal Determination which set out who sections 9.4.27 and 9.4.29 apply to. The subsections are amended to reflect contemporary drafting standards.

Sections 18 to 21 amend subsections 9.4.32.1, 9.4.33.1, 9.4.34.1 and 9.4.37.1 of the Principal Determination which set out that sections 9.4.32 to 9.4.34 and 9.4.37 apply to a member who has a remote location leave travel benefit that Scheme A or Scheme B conditions apply to. The subsections are amended to reflect contemporary drafting standards.

Section 22 omits and substitutes subsection 9.4.37.2 of the Principal Determination that sets out when a member in a specific location accrues remote location leave travel benefits. The subsection is redrafted to reflect contemporary drafting standards.

Sections 23 and 24 amend section 9.4.38 of the Principal Determination which provides circumstances where a member's partner accrues 1 fewer remote location leave travel than is provided for under section 9.4.29. The sections are amended to reflect contemporary drafting standards.

Section 25 amends subsection 9.5.12.2 of the Principal Determination which sets out what a travel period is for a member who is ceasing continuous full-time service. The section is amended to reflect contemporary drafting standards.

Section 26 omits and substitutes section 9.6.23 of the Principal Determination which sets out the amount that a member is eligible for while undertaking travel provided under Chapter 9 Part 6 Division 4. The section is redrafted to reflect contemporary drafting standards.

Section 27 amends the note in paragraph 10.4.4.1.b of the Principal Determination which provides that if the member contributed to the extent of the loss or damage to their clothing or personal effects the amount of payment they are eligible to will be reduced. The note is amended to change the reference to 'If this is the case,' to 'If the member contributed to the loss or damage' to better reflect contemporary drafting standards.

Section 28 to 30 amend sections 11.2.7 to 11.2.9 of the Principal Determination which provide the amount and eligibility for a payment of an additional death benefit. The sections are amended to change 8 references to 'spouse' to 'partner' to reflect contemporary drafting standards.

Section 31 omits and substitutes subsection 11.2.9.2 of the Principal Determination which provides that additional conditions apply if a dependent child amount is payable for a child and certain conditions are met. The subsection is redrafted to reflect contemporary drafting standards.

Section 32 amends paragraph 11.2.10.1.b of the Principal Determination which provides one of the conditions that must be met for a severe injury adjustment to be payable to a member under Chapter 11 Part 2 Division 3. The paragraph is amended to change 2 references to 'described' to 'set out' to better reflect contemporary drafting standards.

Section 33 omits and substitutes subsection 11.2.12.2 of the Principal Determination which provides that if a member does not have primary responsibility for the daily care of their child an amount payable under

subsection 11.2.11.2 is paid to the person who does have responsibility. The subsection is redrafted to reflect contemporary drafting standards.

Section 34 omits and substitutes section 12.3.16 of the Principal Determination which defines a posting period overseas. The section is redrafted to reflect contemporary drafting standards.

Section 35 amends subsection 13.1.3.2 of the Principal Determination which provides that Chapter 13 Parts 1 to 3 do not apply to a member on an officially approved activity overseas. The subsection is amended to change the reference to 'an officially approved activity overseas, as described in' to 'officially approved activities under Part 4 Division 2' to better reflect contemporary drafting standards.

Sections 36 and 37 omits and substitute subsections 13.2.11.2 and 14.4.15.2 of the Principal Determination which set out a member's eligibility for rest periods. The subsections are redrafted to reflect contemporary drafting standards, and to add subsections 13.2.11.2A and 14.4.15.2A, which inserts text previously provided by subsections 13.2.11.2 and 14.4.15.2.

Section 38 omits subsection 15.4.3.2 of the Principal Determination which provides that a member to whom paragraph 15.4.3.1.a applies is not eligible for assistance with rent or utilities while on a long-term posting overseas. The subsection is non-legislative in that it does not alter any benefits and is removed.

Section 39 omits and substitutes section 16.7.2 of the Principal Determination which sets out who Chapter 16 Part 7 applies to. The section is redrafted to reflect contemporary drafting standards.

Section 40 omits and substitutes subsection 17.4.12.3 of the Principal Determination which provides that an approved visitor ceases to be eligible for accommodation assistance after the approved period has ended. The subsection is redrafted to reflect contemporary drafting standards.

Section 41 omits and substitutes section 17.4.13 of the Principal Determination which provides that an approved visitor is eligible to be reimbursed reasonable costs during the approved period for meals after providing a receipt. The section is redrafted to reflect contemporary drafting standards.

#### Schedule 2—Geomatic Technician non-reduction provisions extension amendments

Sections 1, 2 and 3 of this Determination amend the table in Part 2 of Annex 3.2.B of the Principal Determination which provides salary non-reduction periods for employment categories of members with the rank of Warrant Officer Class 2 or lower. The amendments extend the end date of salary non-reduction periods for Geomatic Technicians to 30 June 2022.

#### Schedule 3—Education assistance rates and benchmark school amendments

Section 1 amends subsection 8.4.10.3 of the Principal Determination, which applies to a member who engages a tutor for their child. The amendment increases the maximum hourly rate of reimbursement from \$109 to \$111. This rate has increased in line with the education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounded up to the nearest dollar.

Section 2 omits and substitutes the table in subsection 8.4.11.3 of the Principal Determination, which sets the maximum benefits provided for web-based tutoring used in the calculation of the maximum reimbursement a member can receive. The rates have increased in line with the Education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounding the underlying figure to the nearest dollar.

Section 3 omits and substitutes the table in subsection 8.4.14.3 of the Principal Determination, which sets the maximum education assistance available to members who have children that are recognised as a dependant with special needs. The following amendments have been made.

- An increase to the maximum hourly rate that a member may be reimbursed when their child with special needs requires a therapy service or tuition not provided by the school, but critical to their educational progress. The rate is increased from \$109 to \$111.
- An increase to the maximum amount for an assessment of the child's needs, critical to the development of an educational program. The rate is increased from \$804 to \$821.

These changes have increased in line with the Education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounding the underlying figures to the nearest dollar.

Sections 4 and 5 amend subsection 8.4.14.5 of the Principal Determination, which sets the maximum benefit and the contribution for a member who has a child who needs to access a special program at a private school. The subsection is amended to increase the maximum benefit from \$29,939 to \$30,145 a year and increase the member contribution rate from \$393 to \$401 per year. The new rate is based on advice received from the independent data provider.

Section 6 amends subsection 8.4.15.4 of the Principal Determination, which provides that the Chief of Defence Force may extend education assistance to a member for their child for an additional 14 weeks for each subject, capped at a maximum hourly rate. The amendment increases the maximum rate from \$109 to \$111. This change is in line with an increase in the Education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounding the underlying figure to the nearest dollar.

Section 7 omits and substitutes the table in subsection 8.4.21.1 of the Principal Determination, which sets the maximum reimbursement and contributions payable by a member who is eligible to receive a benefit under Division 4 of Part 4 of Chapter 8 of the Principal Determination. The amendment increases the maximum rates of reimbursement for compulsory tuition fees, accommodation for children who do not accompany a member to a posting location and a member's annual contribution rate.

The rate changes are as follows.

- An increase in the maximum annual compulsory tuition fee reimbursement from \$29,939 to \$30,145 with an increase in the amount of the member's contribution from \$393 to \$401.
- An increase in the maximum reimbursement of board if accommodated in a boarding school or a commercial establishment from \$27,409 to \$27,601.
- An increase in the maximum reimbursement if accommodated privately from \$17,068 to \$17,199.
- An increase in the annual member contribution towards their child's boarding fees (if it is their first year) from \$2,798 to \$2,825.
- An increase in the annual member contribution towards their child's boarding fees (if not their first year) from \$3,203 to \$3,232.

These new rates are based on advice received from the independent data provider.

Section 8 amends subsection 8.4.25.1 of the Principal Determination which sets out the rate and period of assistance for accommodation for members whose child is in tertiary education and studying away from the member's location of residence. The amendment increases the current fortnightly rate from \$384 to \$425 a fortnight for accommodation costs.

Section 9 amends subsection 14A.1.18.2 of the Principal Determination which sets out the conditions for education assistance for a member whose school age dependant has been evacuated and continues to study the curriculum of the school at the posting location overseas. The amendment increases the current rate a member may be reimbursed for tuition from \$109 to \$111 per hour. This rate has increased in line with the education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounded up to the nearest dollar.

Section 10 amends subsection 14A.1.21A.5 of the Principal Determination which provides that section 14A.1.21A ceases to apply on 30 June 2021. The amendment changes the reference to '2021' to '2022' to extend the provision of education assistance for the children of members on a long-term posting in the United States of America whose education has been impacted by COVID-19 by 1 year. Extending the date by 1 year is consistent with conditions of service provided by the Department of Foreign Affairs and Trade.

Section 11 omits and substitutes the table in subsection 15.6.11.2 of the Principal Determination, which lists the annual contribution that a member must pay when receiving compulsory tuition fee benefit for their child who attends school in the overseas posting location. The amendment increases the following rates of contribution payable by a member. The increase is in line with the education component of the

Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounding the underlying figure to the nearest dollar.

- Member contribution towards compulsory tuition for a pre-school student is increased from \$524 to \$535.
- Member contribution towards compulsory tuition for a primary school student is increased from \$179 to \$182.
- Member contribution towards compulsory tuition for a secondary school student or a student at a junior college is increased from \$417 to \$426.

Section 12 amends subsection 15.6.21.2 of the Principal Determination, which specifies the rate of contribution payable by a member posted to Cherbourg towards the cost of the child's education. The contribution rates are increased from \$417 to \$426. The rates are increased in line with the Education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent) rounding the underlying figure to the nearest dollar.

Sections 13 to 15 amend section 15.6.26 of the Principal Determination, which specifies the rate of education assistance for compulsory school fees available to a member who is on a long-term posting overseas when their child attends an Australian school and the contribution payable by the member. The following rate changes are made based on advice received from the independent data provider.

- The maximum reimbursement for compulsory tuition fees is increased from \$29,939 to \$30,145 a year.
- The following rates are updated in line with the Education component of the Consumer Price Index for the 12 month period ending December 2020 (2.1 per cent), rounding the underlying figure to the nearest dollar.
  - Member contribution towards compulsory tuition fees for a pre-school or primary school student has increased from \$179 to \$182.
  - Member contribution towards compulsory tuition fees for a secondary school student has increased from \$417 to \$426.

Sections 16 to 20 amend section 15.6.27 of the Principal Determination, which specifies the rate of education assistance for accommodation costs available to a member who is on a long-term posting overseas when their child lives in Australia in boarding school or equivalent accommodation and the contribution payable by the member. The following rate changes have been made based on advice received from the independent data provider.

- The maximum reimbursement for accommodation where a child boards at boarding school or a commercial boarding establishment has decreased from \$30,207 to \$27,601 a year.
- The maximum reimbursement for private accommodation has decreased from \$19,866 to \$17,199 a year.
- For a member whose child lives at a boarding school, the member's accommodation contribution for the first year is increased from \$2,798 to \$2,825.
- For a member whose child lives at a boarding school, the member's accommodation contribution for subsequent years is increased from \$3,203 to \$3,232.
- For a member whose child is in private accommodation the member's accommodation contribution is increased from \$3,182 to \$3,232.

Section 21 omits and substitutes table item 10 of Annex 15.6.A of the Principal Determination which provides a list of benchmark schools which are used for determining the amount of education assistance available to a member under Chapter 15 Part 6. The table item is amended to insert a benchmark school, Ecole Montessori Bilingue, Les Petits Bateaux, for pre-school and kindergarten at the posting location of Cherbourg, France.

#### Schedule 4—Overseas definitions amendments

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

Section 1 omits and substitutes section 14.1.3 of the Principal Determination which provides to whom Chapter 14 applies. The section has been re-inserted as section 14.1.1 to restart the section numbering within Part 1: General Provisions. Section 14.1.2 has been added and provides definitions which apply to Chapter 14.

Section 2 omits section 14.6.3 of the Principal Determination which provided the definition of “evacuation” this definition has been inserted into section 14.1.2 of the Principal Determination by section 1 of this Schedule.

Section 3 omits and substitutes Chapter 15 Part 1 of the Principal Determination which provides general provision which apply to all of Chapter 15. The part now provides the following:

- Section 15.1.1 provides the purpose of Chapter 15, which is to set out conditions of service for members living and working on long-term posting overseas
- Section 15.1.2 provides who Chapter 15 does not apply to.
- Sections 15.1.3, 15.1.3,A 15.1.4, 15.1.5, 15.1.6, 15.1.7 and 15.1.8 provide definitions which apply to Chapter 15, and now includes official vehicle, private us, close relative, utilities, rent group compulsory tuition fees, benchmark school, posting location, beneficiary and COVID-19 control measure which were previously found within various parts within the Chapter.
- Section 15.1.10 provides how public holidays are observed for members who are on long-term posting overseas.
- Section 15.1.11 provides how Christmas stand-down applies to member who are on long-term posting overseas.

Section 4 omits and substitutes section 15.2A.9 of the Principal Determination, which provides how benefits are provided when a member’s partner is posted to the same location as the member and their partner is eligible for a benefit from the Commonwealth that is for the same or comparable purpose to the benefits provided under this Chapter 15 Part 2A. The section has been amended to promote the use of the correct terminology and bring it into line with contemporary drafting standards.

Sections 5,6,7,8, 9 and 11 omit sections 15.3.24, 15.3.31, 15.4.14, 15.4.17A, 15.6.4 and 15.9.1A respectively of the Principal Determination. These sections provided definitions which apply to various parts within Chapter 15. These definitions have been inserted into Chapter 15 Part 1 under section 3 of this Schedule to bring them into line with contemporary drafting standards.

Section 10 omits and substitutes the title of section 15.8.2 of the Principle Determination which provides what a member’s location is taken to be when on long-term posting overseas, and the corresponding approved club in the location for the purpose of pursuing sporting, recreational and fitness activities. The section title has been amended to better reflect what is contained within the section.

Section 12 omits and substitutes Chapter 16 Part 1 of the Principal Determination which provides general provision which apply to all of Chapter 16. The part now provides the following:

- Section 16.1.1 provides the purpose of Chapter 16, which is to provide an overseas hardship package, which provides assistance for members and their dependants for difficulties or hardships experienced while on long-term posting, or short-term duty, at certain posting locations overseas.
- Sections 16.1.2, 16.1.3 and 16.1.4 provide definitions which apply to Chapter 16. The section now includes definitions for in-country, provisional hardship location, qualifying location and qualifying period which were previously found within various parts within the Chapter.
- Section 16.1.5 provides who Chapter 16 applies to.
- Section 16.1.6 provide who Chapter 16 does not apply to.

Section 13 omits and substitutes section 16.2A.3A of the Principal Determination, which provided definitions which apply to Chapter 16 Part 2A. These definitions have been inserted into Chapter 16 Part 1 by section 12 of this Schedule. Section 16.2A.3A has been redrafted to set out how benefits are provided when a member's partner is posted to the same location as the member and their partner is eligible for a benefit from the Commonwealth that is for the same or comparable purpose to the benefits provided under Part 2A. This rule was previously provided under 16.1.5 of the Principal Determination which was omitted by section 12 of this Schedule.

Section 14 omits reference to "under section 16.1.5" from subsection 16.2A.3B.2 of the Principal Determination, which provides when a member is eligible for location allowance. Section 16.1.5 previously provided the dual Commonwealth benefit rule, and has been omitted and re-inserted by section 12 and 13 of the Schedule respectively. The reference is administrative in nature and is removed.

Section 15 omits and substitutes section 17.1.2 of the Principal Determination which provides definitions which apply to Chapter 17. The section has been amended to include approved period, approved visitor, hospital, medical authority, serious illness, very serious illness, specified area, and threat level which were previously found within various parts within Chapter 17.

Sections 16 and 17 omit sections 17.4.3 and 17.7.4 respectively of the Principal Determination. These sections provided definitions which apply to various parts within Chapter 17. These definitions have been inserted into section 17.1.2 of the Principal Determination under section 14 of this Schedule to bring them into line with contemporary drafting standards.

#### Schedule 5—Allowances adjustment amendments

Section 1 omits and substitutes the table in subsection 15.2A.20.2A of the Principal Determination which provides the base rate for the calculation of child supplement allowance payable to a member posted overseas. The rates provided in the table have been increased to reflect the change to the average annual salary of a member posted overseas.

Section 2 omits and substitutes the table in subsection 16.2A.5.1 of the Principal Determination which provides the rate of location allowance payable to a member performing duty in a hardship location. The rates provided in the table have been increased to reflect the change to the average annual salary of a member posted overseas.

#### Schedule 6—Transitional provisions

Section 1 defines Defence Determination 2016/19 for the purpose of this schedule.

Section 2 enables a member who was eligible for salary non-reduction on 30 June 2021 to remain eligible between 1 July 2021 and the commencement of this determination, had Schedule 02 of this Determination been in force.

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**

Consultation was not considered necessary for the amendments in Schedules 1 and 5. The changes are technical in nature and do not amend the provision of benefits and the rule maker was satisfied that external consultation was not required.

The rule maker was satisfied that further external consultation was not required in the making of Schedules 2 and 6.

Consultation is not considered necessary for the amendments in Schedule 3 as they are routine rate adjustments, and do not amend the underlying policy. Rates are based on changes in the Consumer Price Index, obtained from the Australian Bureau of Statistics or advice from an independent data provider and amendments are made according to an established policy



Consultation was undertaken with the Army, Navy and Air Force during the development of Schedule 5.

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

# Statement of Compatibility with Human Rights

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

## ***Defence Determination, Conditions of service Amendment (Subject matter) Determination 2021 (No. 11)***

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 make technical amendments that promote the use of the correct terminology and bring a number of provisions into line with contemporary drafting standards. Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.
- To extend salary non-reduction for Royal Australian Engineer Geomatic Technicians to 30 June 2022.
- To make routine adjustments to the rates of education assistance. The adjustments are based on changes in the Consumer Price Index, obtained from the Australian Bureau of Statistics, or on advice from an independent data provider.
- Extend the provision of education assistance for the children of members on a long-term posting overseas in the United States of America whose education has been impacted by COVID-19 by 1 year, which is consistent with conditions of service provided by the Department of Foreign Affairs and Trade
- To add a benchmark school for Cherbourg, France to enable education assistance to be provided to members whose children are in pre-school and kindergarten at that location. Recent changes in French law now require children from the age of 3 to attend school. Setting a benchmark pre-school and kindergarten for Cherbourg will enable members to send their children to pre-school and kindergarten at a reduced cost to the member.
- To make technical amendments that promote the use of the correct terminology and bring a number of definitions into line with contemporary drafting standards. Technical amendments are routine in nature, and do not alter the underlying policy. These amendments will not change the benefits which are currently provided.
- To implement routine annual adjustments to the child supplement allowance and location allowance for a member posted overseas.

### **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 to an adequate standard of living*

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

#### *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.

Schedules 1 and 4 of this Determination make technical amendments to the Principal Determination and do not engage any human rights issues.

Schedules 2 and 6 protect the right to enjoyment of favourable conditions of work by extending for one year, the period in which a salary can't not be reduced, for qualifying members.

Sections 1 to 20 of Schedule 3 of this Determination compatible human rights by adjusting education assistance rates to ensure members of the ADF continue to receive just and favourable conditions of work. Periodic updates of the rates ensure that they remain contemporary and reflect the changes in the cost of living. These amendments also advances human rights by ensuring education assistance is extended for the children of members who are impacted by the closure of government schools in the United States of America due to the impact of COVID-19.

Section 21 of Schedule 3 of this Determination compatible human rights by providing members posted to Cherbourg and their families with a benefit to cover the costs a child attending pre-school.

Schedule 5 is compatible with human rights by ensuring that the rates of child supplement and location allowances payable to members posted oversea remains contemporary. These allowances ensure that members of the ADF continue to receive just and favourable conditions of work.

### **Conclusion**

This Determination is compatible with human rights because, to the extent that it engages with human rights or freedoms, it advances the protection of human rights.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions