

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination 2022 (No. 14)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (Defence Act) 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 Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as part of the member's conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligations and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

### Purpose

The purpose of this Determination is to do the following:

- Extend salary non-reduction for Supervisor Section Supply Chain (Corporal) and Unit Quartermaster Advanced (Corporal) to 20 January 2025. This will preserve the salary of members who have not completed the Mounted Leader Course due to unanticipated delays encountered during the transition period which directly impacted the delivery and conduct of training for affected members.
- Provide removal benefits relating to pets and vehicles for members posted to an external territory of Australia or Thursday Island.
- Provide removal and storage of excess furniture and effects for a member without dependants or member with dependants (unaccompanied) who is posted to RAAF Base Tindal for at least 6 months if they elect to live in living-in accommodation. This provides members posted to RAAF Base Tindal with equivalent benefits to those provided to members posted overseas.
- Include suitable living-in accommodation at the minimum of Level 5 as respite accommodation for members regardless of rank on-board a seagoing submarine when alongside in a foreign port or any port that is not the vessel's home port.
- Update the rates for food allowance for members posted to a seagoing ship or nuship that is temporarily unfit for a member to live in. The changes made by this Determination ensure that food allowance payable to these members is adjusted in line with current living expenses based on Australian Bureau of Statistics data and the Consumer Price Index and aligns with the rate of food allowance payable to members with dependants (unaccompanied) who live out under section 7.9.10.
- Extend the additional excess baggage provision for overseas travel in specified circumstances from 30 September 2022 until 1 March 2023.
- Remove provisions applicable to members posted to Cherbourg, France which are no longer necessary as there are no longer any members posted to this location.
- Expand the flexible housing trial to any location within Australia and enable a member to access suitable housing in an extended posting location to allow a member's dependant, who is a child, to remain in child care, pre-school, primary school or secondary school.
- Close the Puckapunyal housing trial to members posting to the Puckapunyal Military Area after 12 October 2022.
- To provide a rent ceiling for members who are participating in the Puckapunyal housing trial.

- Repeal *Defence (Early return of members from post) Determination 2021*, the operation of which is spent.
- To provide savings and transitional provisions to phase-in amendments concerning food allowances and excess baggage.

### **Operational Details**

Details of the operation of the Determination are provided at annex A.

### **Human rights compatibility**

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

### **Review options**

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, the consultation was undertaken with the following:

- Schedule 1: Directorate of Military Remuneration and Army.
- Schedule 2: Navy, Army and Air Force, Defence Finance Group, Directorate of Relocations and Housing and the Overseas Administration Team within the Department of Defence.
- Schedule 3: Navy, Army, Air Force, Directorate of Relocations and Housing and the Directorate of People Systems Business Analysis within the Department of Defence; and Defence Housing Authority.
- Schedule 4: Overseas Administration Team within the Department of Defence.
- Schedule 5: Navy, Defence Finance Group and Directorate of Relocations and Housing within the Department of Defence.

The rule maker was satisfied that further consultation was not required.

**Approved by:**

**Fiona Louise McSpeerin**

Assistant Secretary  
People Policy and Employment Conditions

**Authority:**

Section 58B of the  
*Defence Act 1903*

**Defence Determination, Conditions of service Amendment Determination 2022 (No. 14)*****Operational details***

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

Section 2 provides that this Determination commences on 13 October 2022.

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—Salary non-reduction provision extension amendments**

Items 1 and 2 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 Supervisor Section Supply Chain (Corporal) and Unit Quartermaster Advanced (Corporal) to 20 January 2025.

**Schedule 2—Miscellaneous amendments**

Items 1 and 2 amend section 6.1.21 of the Principal Determination which provides that a member is eligible for the cost that may be incurred in the transporting and boarding of their household pet by a registered or licenced service provider. Item 1 amends the section heading to reflect the amendments made by item 2, which repeals and substitutes subsection 6.1.21.1 and inserts subsection 6.1.21.1A to expand the benefit to a member posted to an external territory or Thursday Island and on their return to the Australian mainland.

Items 3 and 4 amend section 6.1.23 of the Principal Determination which limits the assistance for pet relocation cost that a member may claim. Item 3 renumbers the subsection as a result of subsection 6.1.23.2 being inserted by item 4, which limits the costs of a relocation of a pet to a chosen location to that of the cost of relocating the pet to the member's posting location.

Item 5 inserts section 6.5.37A into the Principal Determination. The section provides that a member without dependants or a member with dependants (unaccompanied) is eligible a removal of their furniture and effects if they are posted to RAAF Base Tindal for 6 months or longer and elect to occupy living in accommodation.

Item 6 inserts section 6.5.54A into the Principal Determination. The section provides that a member who is eligible for a removal under section 6.5.37A, which is inserted by item 5 of this Schedule, is eligible for storage of their furniture and effects which cannot be housed in their living-in accommodation at the losing location. This provides members with equivalent benefits provided to members posted overseas to ensure they are not disadvantaged in their conditions of service.

Item 7 amends section 6.5A.8 of the Principal Determination which provides that a member is eligible for assistance in removing up to 2 vehicles if a vehicle is either being driven under section 6.5A.9 or being transported under section 6.5A.10. The item adds subsection 6.5A.8.3 to provide the benefit to a member posted to an external territory or Thursday Island and permits them to have their car removed to another location within Australia.

Items 8 and 9 amend section 6.5A.9 of the Principal Determination which provides that a member is eligible for assistance in removing a vehicle that is being driven under licence by the member or their dependant. Item 8 renumbers the subsections as a result of subsection 6.5A.9.2 being inserted by item 9, which provides that the section does not apply to a vehicle being removed by a member posted to an external territory or Thursday Island to their chosen location that is not their posting location. This means that if the member's vehicle is removed to another location, it can only be by way of freight.

Item 10 amends section 6.5A.12 of the Principal Determination which limits the assistance for vehicle removal costs. The item inserts subsection 6.5A.12.2A which provides that the maximum benefit available to a member posted to an external territory or Thursday Island who has a car removed to another location is the cost of transporting the vehicle to the member's posting location.

Item 11 amends section 7.4.15 of the Principal Determination which provides suitable living-in accommodation for members according to the member's reason for living in or their rank group. This amendment repeals and substitutes the table in paragraph 7.4.15.1.d to include suitable living-in accommodation at the minimum of Level 5 as respite accommodation for members regardless of rank on-board a seagoing submarine when alongside in a foreign port or any port that is not the vessel's home port. The increase in the minimum level provided for submariners is to acknowledge their living conditions on-board and therefore the need for respite accommodation. The section is also redrafted to provide clarity to the reader and to promote contemporary drafting styles.

Items 12 to 14 update references to the table substituted by item 11.

Items 15 and 16 amend section 7.4.48 of the Principal Determination which provides food allowance for members posted to a seagoing ship or nuship that is temporarily unfit for a member to live in and the member is required to occupy temporary commercial accommodation ashore that has cooking facilities.

- Item 15 amends subsection 1 to reflect the change in the frequency of payment of food allowance to an eligible member from fortnightly to daily.
- Item 16 repeals and substitutes the table in subsection 2 to align with the change made by item 15 and to update the rates of food allowance that are payable. The food allowance rates are increased to reflect the contemporary standard of living based on Australian Bureau of Statistics data on the average weekly food expenditure of a single-person household and the Consumer Price Index for food and non-alcoholic beverages group and to align with the rates payable to members with dependants (unaccompanied) who live out under section 7.9.10 of the Principal Determination.

Item 17 amends paragraph 14.4.11.2A.b of the Principal Determination which provides that a member may be eligible for the payment of excess baggage costs for travel between specified locations between 1 December 2021 and 30 September 2022. This provision has been amended to extend the travel period until 1 March 2023.

Items 18 and 20 repeal paragraph 14.6.17.2.c and subsection 15.3.13.3 of the Principal Determination which exclude members eligible for benefits under *Defence (Early return of members from post) Determination 2021* (the 2021 Determination) from provisions about payments for financial losses if the Commonwealth withdraws from a posting location and time periods for reunions. The 2021 Determination is repealed by Schedule 4 of this Determination.

Items 19 and 21 to 26 repeal various provisions from the Principal Determination which provide education and travel benefits to members who are posted to Cherbourg, France. These provisions are no longer required as there are no members posted to the location. The following provisions are repealed.

- Item 19 repeals subsection 15.3.12.1A which provides that the CDF may authorise additional reunion visits for a member posted to Cherbourg, France, who has a child who is a dependant enrolled in boarding school at St John's College, Southsea, England.
- Item 21 repeals section 15.3.15B which provides that a member who is posted to Cherbourg, France, is eligible for travel costs to accompany a child to an approved school and for reunion visits with that child.
- Item 22 repeals an exception to subsection 5.3.16.1 which exempts a member receiving education assistance when the member is eligible for education assistance relating to Cherbourg.
- Item 23 repeals section 15.6.21 which provides education assistance for members on a long-term posting overseas in Cherbourg, France.
- Item 24 repeals section 15.6.22 which provides travel benefits for a child and an accompanying person when the child commences and ceases boarding school when the member is posted to Cherbourg, France.
- Item 25 repeals and substitutes item 10 in Annex 15.6.A which provides the benchmark schools in France. The item has been amended to remove the benchmark schools for Cherbourg, France.
- Item 26 repeals and substitutes item 5 in Annex 15.6.B which provides the approved summer schools in France. The item has been amended to remove the approved summer schools for Cherbourg, France.

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

#### Schedule 3—Flexible housing trial and Puckapunyal housing trial amendments

Item 1 repeals and substitutes paragraph 6.5.5.1.h of the Principal Determination which provides that a member who is posted to a flexible housing trial location is not eligible for a removal in specified circumstances. The paragraph has been amended reflect changes made to the flexible housing trial made by item 3 of this Schedule.

Item 2 repeals subsection 6.5.5.2 of the Principal Determination which provides the flexible housing trial locations. The flexible housing trial is being expanded to locations across Australia. As a consequence, the list of locations is no longer needed.

Item 3 repeals and substitutes section 7.1.15 of the Principal Determination which provides when a member is a flexible housing trial member. The section has been amended to make the following changes.

- The list of postings that are flexible housing trial locations have been removed.
- A new provision has been included to allow a member to participate in the flexible housing trial if they have a child, who is a dependant, and who is attending early child care, pre-school, primary school or secondary school. This will allow the family to remain in the location for the child's care or education. The term 'early child care' has also been defined for the purpose of this section.
- The date for approval to extend a member's posting location under the flexible housing trial has been extended to 31 December 2025.

Item 4 repeals and substitutes subsection 7.1.17.3 of the Principal Determination which provides that the Puckapunyal housing trial ceases on 31 December 2023. This section has been amended to prevent the CDF from approving an extension to the member's posting location as a part of the Puckapunyal housing trial after 12 October 2022. With the expansion of the flexible housing trial these members may be eligible to participate in that trial. Members who are participating in the Puckapunyal housing trial before 13 October 2022 to continue to participate in the trial until they post away from the location.

Item 5 inserts a new paragraph 7.9.9.3A.d into the Principal Determination. The new paragraph provides that the rent ceiling for a Puckapunyal housing trial member is for either Seymour or the location where the member lives, whichever has the higher rent ceiling.

#### Schedule 4—Repeal

Item 1 repeals *Defence (Early return of members from post) Determination 2021* which was created in response to the cessation of the project at to Cherbourg, France and can now be repealed.

#### Schedule 5—Savings and transitional Provisions

Clause 1 defines Defence Determination for the purpose of Schedule 5, which is incorporated as in force from time to time.

Clause 2 provides a transitional provision for a member who was eligible for food allowance under section 7.4.48 of the Defence Determination between 22 March 2021 and the commencement of Schedule 2 of this Determination. The member is eligible for food allowance at the rate set out in subsection 7.4.48.2 of the Defence Determination had the changes made by clause 15 of Schedule 2 of this Determination applied at the time. This rate is reduced by any amount the member has already received for food allowance for the same period.

Clause 3 provides that, between 30 September 2022 and the commencement of Schedule 2 of this Determination, the higher excess baggage limit in subsection 14.4.11.2B of the Defence Determination applies as though the change made by clause 16 of Schedule 2 of this Determination applied at the time.

**Defence Determination, Conditions of service Amendment Determination 2022 (No. 14)****Statement of Compatibility with Human Rights**

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

**Overview of the Determination**

The Purpose of this Determination is to do the following:

- Extend salary non-reduction for Supervisor Section Supply Chain (Corporal) and Unit Quartermaster Advanced (Corporal) to 20 January 2025.
- Provide removal benefits relating to pets and vehicles for members posted to an external territory of Australia or Thursday Island.
- Provide removal and storage of excess furniture and effects for a member without dependants or member with dependants (unaccompanied) who is posted to RAAF Base Tindal for at least 6 months if they elect to live in living-in accommodation. This provides members posted to RAAF Base Tindal with equivalent benefits to those provided to members posted overseas.
- Include suitable living-in accommodation at the minimum of Level 5 as respite accommodation for members regardless of rank on-board a seagoing submarine when alongside in a foreign port or any port that is not the vessel's home port.
- Update the rates for food allowance for members posted to a seagoing ship or nuship that is temporarily unfit for a member to live in.
- Extend the additional excess baggage provision for overseas travel in specified circumstances from 30 September 2022 until 1 March 2023.
- Remove provisions applicable to members posted to Cherbourg, France which are no longer necessary as there are no longer any members posted to this location.
- Expand the flexible housing trial to any location within Australia and enable a member to access suitable housing in an extended posting location to allow a member's dependant, who is a child, to remain in child care, pre-school, primary school or secondary school.
- Close the Puckapunyal housing trial to members posting to the Puckapunyal Military Area after 12 October 2022.
- To provide a rent ceiling for members who are participating in the Puckapunyal housing trial.
- Repeal *Defence (Early return of members from post) Determination 2021*, the operation of which is spent.
- To provide savings and transitional provisions to phase-in amendments concerning food allowances and excess baggage.

**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 engages Article 28 of the Covenant on the Rights of the Child. Article 28 requires States to provide access to different types of education.

### **Assessment of compatibility**

Schedule 1 promotes the right to just and favourable conditions of work by extending for 2 years the period in which a salary cannot be reduced for qualifying members. This will preserve the salary of members who do not currently meet the prerequisites in the Army distribution operator employment categories.

Schedule 2 is compatible with human rights as it provides just and favourable conditions of work by providing the following as a condition of service:

- Removal benefits relating to pets and vehicles to members who are posted to an external territory or Thursday Island so they are not disadvantaged in their conditions compared to members posted overseas.
- Removal and storage benefits to a member without dependants or a members with dependants (unaccompanied) who is posted to RAAF Base Tindal so they are not disadvantaged in their conditions compared to members posted overseas.
- Respite accommodation for members on-board a seagoing submarine when alongside away from home port.

Schedule 3 is compatible with human rights as it provides as it enables members flexibility as to where the member can live with their families as a condition of service. The amendment also enables a member and their family to live closer to places of schooling for a member's child dependant.

Schedule 4 does not engage with human rights as they repeal provisions that are spent and no longer required as there are no longer any members posted to Cherbourg, France.

### **Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.