

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2024 (No. 6)

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:

- Clarify what travel benefits are provided when members go on authorised travel, their eligibility for recreation leave travel benefits if they are performing duty in a capital city and when they can use the travel card for meals, and adjust the incidental rates from weekly to daily to cover travel periods that are less than 1 week.
- Make technical amendments to provisions relating to the categorisation of members who are part of a dual serving couple to aid understanding of how the provisions are to be applied.
- Amend the approved club for members posted to Italy so they can pursue sporting, recreational and fitness activities.
- Make routine updates to the rate of disturbance allowance provided to eligible members and to the additional payment resulting from their child changing schools following a removal. This adjustment reflects the annual movement in the relevant Consumer Price Index group to the end of the September 2023 quarter.
- Amend the number of fortnightly repayments members are expected to make to repay a rental advance.
- Update the rates for child supplement allowance, which helps with extra costs of maintaining a child who is a dependant at the overseas posting location, and location allowance, which assists members and their dependants with the difficult conditions that may be encountered at an overseas hardship location.
- Make technical amendments that promote the use of contemporary drafting styles, consistency within the Principal Determination and improve readability.

Operational details

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

Sunsetting exemption

The Principal Determination is exempt from sunseting under section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. This sunseting exemption was provided because the instrument is sufficiently large and complex, and is subject to regular review and amendment. The exemption also provides certainty for members, stakeholders and administrators.

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, consultation was undertaken with Navy, Army, Air Force, the Australian Submarine Agency, Australian Signals Directorate, Defence People Group Finance, People Systems Branch and Defence Tax Management Office and the Directorate of Attaché and Overseas Management

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

Approved by:

COL Kirk Lloyd
Acting Assistant Secretary
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

Defence Determination, Conditions of service Amendment Determination 2024 (No. 6)**Operational details**

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

Section 2 provides the following commencement dates:

- Sections 1 to 4 of the Determination commences on the day the instrument is registered.
- Schedules 1, 2 and 3 of the Determination commence on 6 June 2024.
- Schedules 4 and 5 of the Determination commences on 4 July 2024.
- Schedule 6 of the Determination commences on 1 August 2024.
- Schedule 7 of the Determination commences on 6 June 2024.
- Schedule 8 of the Determination commences on 4 July 2024.

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—Travel amendments

Item 1 inserts a new Division title before section 9.0.1 of the Principal Determination. The Division provides general provisions used within Chapter 9 which set out the travel benefits for a member and their resident family.

Item 2 repeals section 9.0.1 of the Principal Determination which provides an overview of Chapter 9. This section is administrative in nature and is not required.

Item 3 repeals and substitutes section 9.0.3 of the Principal Determination which provides the definition of certain terms used in Chapter 9 of the Principal Determination. The amendments are as follows:

- The section has been renumbered to 9.1A.1 to reflect the new Division created by item 1 of this Schedule. The section provides definitions for Chapter 9 which have been amended to promote the use of contemporary drafting styles.
- A new section 9.1A.2 has been included to provide a definition of 'allowable travel time'.

Item 4 amends section 9.2.26 of the Principal Determination to update a cross-reference as a consequence of the amendments made by item 3 of this Schedule.

Item 5 amends section 9.4.7 of the Principal Determination which provides that recreation leave travel benefits include return travel for an eligible member from a location where they perform their duty to: either the location where their nominated family lives in Australia, if any; or, otherwise, to the nearest capital city. The item repeals and substitutes subsection 1 to provide clarification that a member who has no nominated family and is performing duty in a capital city is eligible for a recreation leave benefit to the next nearest capital city.

Items 6 and 8 respectively repeal and substitute sections 9.5.18 and 9.5.36 of the Principal Determination which provide the limitations on a member's use of the travel card or travelling allowance for meals and accommodation. The sections are amended by including in each section, the following:

- A note to clarify that a member is still eligible to use their travel card or meal allowance for meals if they choose to reside privately with family or friends while living out on a journey.
- A note to clarify that a member is not eligible to use their travel card or travelling allowance for meals or accommodation if living-in accommodation is available but they choose to stay off-base.

The sections are also restructured to promote readability and the use of contemporary drafting styles.

Items 7 and 9 respectively repeal and substitute sections 9.5.22 and 9.5.41 of the Principal Determination which provide that a member is eligible for accommodation, meals and incidentals if they live continuously in a location for 21 days or more and continue to live at the location for a further travel period after the 21st day. The sections are amended by doing the following in each section:

- Change the amount for incidentals from \$80.50 per week to \$11.50 per day to simplify the calculation required when working out the amount of incidentals a member is eligible for when their travel period is not made up of full weeks.
- Remove references to calculations on a pro rata basis.

The sections are also amended to promote readability and the use of contemporary drafting styles.

Items 10 and 11 amend Part 2 of Annex 9.5.B to Chapter 9 of the Principal Determination which provides the weekly rate a member can receive for meals when on a travel period that is longer than 21 days. The Part has been amended to provide that the maximum rate provided by the table is a daily amount. The rates in column C of the table have been amended to provide the daily rates as a consequence of the amendments made by items 7 and 9 of this Schedule.

Item 12 amends section 9.6.28 of the Principal Determination which provides limits on travel benefits for a member who has been authorised to travel by private vehicle. The section has been amended as a consequence of the amendments made by items 1 and 2 of this Schedule and to promote the use of contemporary drafting styles.

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

Schedule 2—Domestic miscellaneous amendments

Item 1 inserts section 1.3.19A into the Principal Determination. The new section provides that when a member's partner is also a member and both members occupy living-in accommodation, neither member can be categorised as unaccompanied resident family.

Item 2 amends section 1.3.20 of the Principal Determination which provides when a person can be categorised as unaccompanied resident family of a member. The section has been amended to clarify that to be categorised as unaccompanied resident family, a person must meet the criteria for a type of unaccompanied resident family in Subdivision 4: Types of unaccompanied resident family. The section has been further amended to provide that if a member is part of a dual serving couple, Subdivision 5: Dual serving members also applies.

Item 3 repeals paragraph 1.3.21.b of the Principal Determination which provides that when a member ceases to meet Subdivision 5: Dual serving members, they cease to be categorised as unaccompanied resident family. This provision is no longer required as a consequence of the changes made by item 2 of this Schedule.

Item 4 amends section 5.3.11 of the Principal Determination which provides travel costs to a member to assist with medical needs. Paragraph 5.3.11.a has been repealed and substituted to promote the use of contemporary drafting styles and improve readability.

Item 5 repeals paragraph b from the definition of 'annual allowance' in section 5.4.42 of the Principal Determination, which provides definitions that apply to Division 8 of Part 4 of Chapter 5. The paragraph has been repealed as it refers to executive vehicle allowance, which is no longer provided under the Principal Determination as a consequence of the changes made by *Defence Determination, Conditions of service Amendment Determination 2023 (No. 13)*.

Items 6, 8, 11 to 16 and 19 amend various provisions within the Principal Determination to remove exceptions and incorporate them into the sections to which they apply. These changes promote the use of contemporary drafting styles and improve readability.

Item 7 amends section 7.3.14 of the Principal Determination which provides the amount a member is eligible to receive for an initial home purchase under the home purchase assistance scheme. The section

has been amended to clarify that where an eligible person owns the home with other persons, the member and their resident family is taken to have one share of the home.

Item 9 amends section 7.3.30 of the Principal Determination which provides the reimbursement of costs associated with the sale of a home on ceasing continuous full-time service or on commencement of a transition location agreement. Paragraph 7.3.30.2.c has been inserted to provide that the member or their resident family is required to have lived in the home at the housing benefit location in order to be eligible for the reimbursement of the costs on the sale of the home.

Item 10 amends section 7.3.31 of the Principal Determination which provides the amounts and kinds of costs that can be reimbursed when a member sells a home. Subsection 7.3.31.3 has been amended to clarify that if a member holds a registered proprietary interest in a home with a person who is not part of their resident family, they are eligible for a share of the total reimbursement amount proportionate to the interest they hold.

Items 17 and 18 amend subsection 8.7.9.3 and paragraph 8.7A.8.2.a of the Principal Determination to update cross-references as a consequence of the amendments made by item 5 of Schedule 1.

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

Schedule 3—Overseas miscellaneous amendments

Items 1 and 5 amend sections 12.3.5 and 15.2A.15 of the Principal Determination to make technical amendments which promote the use of contemporary drafting styles and consistency within the Principal Determination.

Items 2 and 3 amend various provisions in the Principal Determination to amend “posting location” to “housing benefit location”. The changes are a consequence of the introduction of the location framework which took effect on 1 July 2023.

Items 4 and 6 amend sections 15.3.8 and 15.3.9 of the Principal Determination respectively. The sections provide how to calculate the reimbursement of excess commuting costs and have been amended to remove information that is administrative in nature and does not, therefore, need to be determined, and to promote the use of contemporary drafting styles and improve readability.

Item 7 amends section 15.5.10 of the Principal Determination which provides a member with reimbursement of pharmaceutical costs for a dependant with special needs if specific criteria are met. Paragraph 15.5.10.1.a has been amended to change “dependant with special needs” to “person with special needs recognised under section 1.3.6”. The change is a consequence of the introduction of the categorisation framework which took effect on 1 July 2023.

Item 8 amends the table under subsection 15.8.2.2 of the Principal Determination which specifies the approved club in a member’s location for the purpose of pursuing sporting, recreational and fitness activities. The table has been amended to change the approved club for members posted to Italy to the Virgin Active Club in Turin.

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

Schedule 4—Repayment of rental advance amendments

Items 1 and 2 amend section 7.8.46 of the Principal Determination, which provides the repayment agreement for rental advances provided under section 7.8.41 of the Principal Determination. The amendments change the 26-fortnight repayment timeframe to 25 fortnights, to ensure that members are able to complete their payments within 12 months.

Schedule 5—Overseas rates amendments

Item 1 amends section 15.2A.20 of the Principal Determination which provides the rate of child supplement allowance that applies to a member posted to an overseas location. The item repeals and substitutes column B of the table in subsection 15.2A.20.3 to increase the rates to reflect changes to the average salary of members posted overseas.

Item 2 amends section 16.2A.5 of the Principal Determination which provides the rate of location allowance which applies to a member when they are posted to an overseas hardship location to assist with the difficult conditions that may be encountered. The item repeals and substitutes columns B and C of the table in subsection 16.2A.5.1 to increase the rates to reflect changes to the average salary of members posted overseas.

Schedule 6—Disturbance allowance amendments

Item 1 repeals and substitutes section 6.1.6 of the Principal Determination which sets out the rates of disturbance allowance that may be payable to members. The rates of disturbance allowance have been increased in line with the annual movement in the Consumer Price Index group to the end of the September 2023 quarter. The section has also been restructured to split the table which provides the rates of disturbance allowance payable to a member into 2 smaller tables to improve readability and to reflect current drafting standards.

Items 2 and 3 amend sections 6.1.8 and 6.1.9 of the Principal Determination to update cross-references to the table in section 6.1.6, which has been amended by item 1 of this Schedule.

Item 4 amends section 6.1.12 of the Principal Determination which provides a payment of an amount to a member when their child is a full-time primary or secondary student and is required to change schools because of a removal. The item amends subsection 6.1.12.1 to increase the rate of additional payment to the member from \$266 for each child to \$280.

Schedule 7—Transitional provisions

Clause 1 defines the Defence Determination for the purposes of this Schedule.

Clause 2 provides a transitional provision for a member who was posted to Italy between 18 January 2024 and the commencement of Schedule 3 of this Determination. The member is eligible for the cost of the club membership they would have been eligible for had the changes made by item 9 of Schedule 3 of this Determination been in force between 18 January 2024 and the commencement of Schedule 3 of this Determination.

Schedule 8—Savings provisions

Clause 1 defines the Defence Determination for the purposes of this Schedule.

Clause 2 provides savings provisions for members who are currently on the 26-fortnight repayment plan which are being amended by Schedule 4 of this Determination. Members who are currently on the repayment plan or who have applied to get an advance before the commencement of Schedule 4 will remain on their repayment plan until their advance has been repaid.

Defence Determination, Conditions of service Amendment Determination 2024 (No. 6)

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:

- Clarify what travel benefits are provided when members go on authorised travel, their eligibility for recreation leave travel benefits if they are performing duty in a capital city and when they can use the travel card for meals, and adjust the incidental rates from weekly to daily to cover travel periods that are less than 1 week.
- Make technical amendments to provisions relating to the categorisation of members who are part of a dual serving couple to aid understanding of how the provisions are to be applied.
- Amend the approved club for members posted to Italy so they can pursue sporting, recreational and fitness activities.
- Make routine updates to the rate of disturbance allowance provided to eligible members and to the additional payment provided as a result of their child changing schools following a removal. This adjustment reflects the annual movement in the relevant Consumer Price Index group to the end of the September 2023 quarter.
- Amend the number of fortnightly repayments members are expected to make to repay a rental advance.
- Update the rates for child supplement allowance, which helps with extra costs of maintaining a child who is a dependant at the overseas posting location, and location allowance, which assists members and their dependants with the difficult conditions that may be encountered at an overseas hardship location.
- Make technical amendments that promote the use of contemporary drafting styles, consistency within the Principal Determination and to improve readability.

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 ensures 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 a child to an adequate standard of living

The recognition of the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development engages Article 27 of the Convention on the Rights of a Child. Article 27 states Parties shall take appropriate action to assist parents and others responsible for a child, to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Right of the child to education

The protection of a child's right to education engages Article 28 of the Convention on the Rights of a Child. Article 28 requires States to provide access to different types of education.

Assessment of compatibility

Schedules 1 to 4 make amendments to the Principal Determination which do not change the underlying policies or benefits. As such, it does not engage any of the applicable rights or freedoms.

Schedules 5 and 6 are compatible with human rights as they increase the rates of child supplement allowance and location allowance to reflect changes to the average salary of members posted overseas. The rates of disturbance allowance payable to members as a result of a removal have also been increased. The annual adjustments are made to ensure that the rates of allowances remain current.

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*.