

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2024 (No. 8)

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.

The Principal Determination is exempt from sunseting under item 21A of section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*. The exemption was granted as the instrument is a large and complex document that is subject to regular review and amendment. The exemption also provides certainty for members, stakeholders and administrators.

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:

- Implement the increment advancement and deferral provisions for nuclear qualified submariners who are posted to a seagoing nuclear powered submarine.
- Update the rates of education assistance available to members domestically and while posted overseas.
- Provide benefits to Defence personnel on a long-term posting overseas with reimbursement of school holiday program costs where their child attends a primary or secondary school that has a cumulative school holiday period of greater than 12 weeks per academic year. The purpose of the new benefit is to assist with the additional costs of educational support and supervision due to the long-term posting overseas and supports the member in continuing their duties at the overseas post location during the school holiday period.
- Provide the Christmas stand-down dates for the 2024-25 Christmas period.
- To remove references to the Commonwealth to better reflect that the benefits and the payment of any costs associated with those benefits are made under the Principal Determination.
- Make technical amendments that promote the use of contemporary drafting styles to promote consistency within the Principal Determination and improve readability.

Operational details

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

Incorporation by reference

For the purpose of adopting Defence Force Remuneration Tribunal (DFRT) determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act.

Retrospective application

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

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 Navy, Army, Air Force, the Australian Submarine Agency, the Australian Signals Directorate and People Systems & Payroll Services Branch.

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. 8)***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.
- Schedule 1 to 5 of the Determination commences on 1 August 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—Nuclear qualified submariners amendments

Item 1 amends section 3.2.29 of the Principal Determination which provides that Chapter 3 Part 2 Division 3 does not apply to a member who is paid salary under Division 4 or Division 4A. This section has been amended to include members who are paid salary under Division 4B consequential to the change made by item 2 of this Schedule.

Item 2 inserts a new Division 4B into Chapter 3 Part 2 of the Principal Determination which provides the administration provisions for salary paid to a member under DFRT Determination No. 2 of 2017, *Salaries*. The new Division provides the increment advancement and deferral provisions for nuclear qualified submariners who are posted to a seagoing nuclear powered submarine. The Division provides the following.

- Section 3.2.47W provides the purpose of the Division.
- Section 3.2.47X provides defined terms used within the Division.
- Section 3.2.47Y provides that the Division applies to members who is in a specified nuclear qualified employment category and is posted to a seagoing nuclear powered submarine.
- Section 3.2.47Z provides that when a member meets specified criteria, the member is to advance one increment level in salary on their increment anniversary date. The section also sets out that a member is not to receive more than one increment in any 12-month period except in specified circumstances. A period when a member is not entitled to salary is not counted towards salary increments.
- Section 3.2.47AA provides the increment deferral provisions when a member does not meet the increment eligibility criteria set out in section 3.2.47Z. The section provides that if a member's increment has been deferred the deferral must be reviewed within 4 months of the deferral and, if the member has met the increment advancement conditions, the member may be granted the increment.

Schedule 2—Education assistance rates amendments

All rates in this Schedule are in Australian Dollars.

Item 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 \$118 to \$123. This change is in line with an increase in the education sub-component of the Consumer Price Index (CPI) for the 12-month period ending December 2023 rounding the underlying figure to the nearest dollar.

Item 2 repeals 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 sub-component of the CPI for the 12-month period ending December 2023 rounding the underlying figure to the nearest dollar. The rate changes are as follows.

- The rate for a child who has studied the subject before and the subject is offered at the new school has increased from \$1,644 to \$1,722.
- The rate for a child who has not studied the subject before and the subject is offered at the new school as increased from \$3,052 to \$3,196.
- The rate for a child who is in year 10, 11, or 12, needs to study the subject as it is essential to their career aims and the subject is not offered at the new school has increased from \$6,105 to \$6,392.

Items 3 to 6 amend section 8.4.14 of the Principal Determination which sets the maximum education assistance available to members who have children with special needs. The following amendments have been made to the section.

- Item 3 amends subsection 8.4.14.3 to increase the maximum hourly rate that a member may be reimbursed when their child with special needs requires a therapy service not provided by the school, but critical to their educational progress. The rate is increased from \$118 to \$123. This change is in line with an increase in the education sub-component of the CPI for the 12-month period ending December 2023 rounding the underlying figure to the nearest dollar.
- Item 4 amends subsection 8.4.14.4 to increase the maximum amount for an assessment of the child's needs, critical to the development of an educational program. The rate is increased from \$864 to \$905. This change is in line with an increase in the education sub-component of the CPI for the 12-month period ending December 2023 rounding the underlying figure to the nearest dollar.
- Item 5 amends subsection 8.4.14.5 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 \$33,683 to \$36,336 a year. The new rates are based on the rates provided by a contracted service provider.
- Item 6 amends subsection 8.4.14.5A which provides that, if a member receives a benefit under subsection 8.4.14.5, then they must pay a contribution. The contribution rate has been increased from \$422 to \$441 per year. The new rates are based on the rates provided by a contracted service provider.

Item 7 repeals 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 \$33,683 to \$36,336 with an increase in the amount of the member's contribution from \$422 to \$441 or the amount equal to the contribution the member would normally have paid.
- An increase in the maximum reimbursement of board if accommodated in a boarding school or a commercial establishment from \$29,375 to \$31,638.
- An increase in the maximum reimbursement if accommodated privately from \$17,650 to \$18,332.
- An increase in the annual member contribution towards their child's boarding fees (if it is their first year) from \$3,191 to \$3,336.
- An increase in the annual member contribution towards their child's boarding fees (if not their first year) from \$3,606 to \$3,754.

These new rates are based on advice received from a contracted service provider.

Item 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 \$467 to \$530 a fortnight for accommodation costs. The rate is based on the Youth Allowance payable under the *Social Security Act 1991* to an independent full-time student living away from home.

Item 9 repeals 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 sub-component of the CPI for the 12-month period ending December 2023 rounding the underlying figure to the nearest dollar.

- Member contribution towards compulsory tuition for a pre-school or kindergarten student is increased from \$563 to \$590.
- Member contribution towards compulsory tuition for a primary school student is increased from \$192 to \$201.
- Member contribution towards compulsory tuition for a secondary school student or a student at a junior college is increased from \$448 to \$469.

Item 10 to 12 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.

- Item 10 amends paragraph 15.6.26.2.b to increase the maximum reimbursement for compulsory tuition fees from \$33,683 to \$36,336 a year.
- Item 11 and 12 amend subsection 15.6.26.3 to increase the following rates in line with the education sub-component of the CPI for the 12-month period ending December 2023, 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 \$192 to \$201.
 - Member contribution towards compulsory tuition fees for a secondary school student has increased from \$448 to \$469.

Items 13 to 17 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 payable in Australian dollars have been made based on advice received from a contracted service provider.

- Item 13 amends subparagraph 15.6.27.2.a.ii to increase the maximum reimbursement for accommodation where a child boards at boarding school or a commercial boarding establishment has increased from \$29,375 to \$31,638 a year.
- Item 14 amends subparagraph 15.6.27.2.b.ii to increase the maximum reimbursement for private accommodation has increased from \$17,650 to \$18,332 a year.
- Item 15 amends subparagraph 15.6.27.3.a.i to increase the contribution for a member whose child lives at a boarding school must make in the first year from \$3,191 to \$3,336.
- Item 16 amends subparagraph 15.6.27.3.a.ii to increase the contribution for a member whose child lives at a boarding school must make for subsequent years from \$3,606 to \$3,754.
- Item 17 amends paragraph 15.6.27.3.b to increase the contribution for a member whose child is in private accommodation the member's accommodation from \$3,606 to \$3,754.

Schedule 3—Summer schools amendments

Item 1 amends section 15.1.3 of the Principal Determination which provides the definitions that apply to Chapter 15: Living and working on long-term posting overseas. The section has been amended to insert the definition of ‘dangerous recreational activity’.

Item 2 amends section 15.1.7 of the Principal Determination which provides the definition of ‘posting location’ for the purpose of benchmark and approved summer schools. The section has been amended to remove reference to approved summer schools and Annex 15.6.B as a consequence of the changes made by items 3 and 5 of this Schedule.

Items 3, 4 and 6 repeal section 15.6.15, section 15.6.16 and Annex 15.6.B of the Principal Determination as they are no longer required as a consequence of the changes made by item 5 of this Schedule.

Item 5 adds Division 2A to Part 6 of Chapter 15 of the Principal Determination. The new Division provides a member reimbursement of costs if their child attends a summer school or summer camp. The new division provides a more contemporary benefit to members whereby if their child attends a primary or secondary school at the overseas posting location where the combined school holiday period for the school the child attends at the overseas posting location is greater than 12 weeks in an academic year, they can receive reimbursement of certain costs, up to a daily maximum, if their child attends a school holiday program that meets certain criteria.

Schedule 4—Miscellaneous amendments

Item 1 amends section 1.3.1 of the Principal Determination which provides defined terms used throughout the Principal Determination. The definition of ‘most economical means of travel’ has been included to provide that it has the meaning as given under Chapter 9 Part 1A and Part 1.

Item 2 amends section 2.2.3 of the Principal Determination which provides benefits for a member to assist them with training and financial advice in preparation for civilian life when they change service category or cease service with the ADF. Paragraph 2.2.3.b omits “SERCAT” and substitutes “service category” to remove the acronym.

Item 3 amends section 5.11.24 of the Principal Determination which provides the method of calculating the duration of travel for the purpose of short absence travel. The section has been amended to remove “as defined in Chapter 9 Part 1” to improve readability and to promote the use of contemporary drafting styles.

Item 4 amends subsection 5.12.3.1 of the Principal Determination which provides the Christmas stand-down dates for members performing duty in Australia. The subsection has been amended to provide that the dates for the 2024-2025 stand down period are 24 December 2024 to 1 January 2025 inclusive.

Item 5 amends section 6.5.16 of the Principal Determination which provides for privately arranged removals assistance. Paragraph 6.5.16.1.b omits and substitutes “privately arrange” to correct grammar.

Item 6 repeals and substitutes section 6.5.69 of the Principal Determination which provides a removal for a member’s partner when a member marries, or has their relationship recognised, outside Australia. The section has been amended to improve readability and promote the use of contemporary drafting styles.

Items 7 to 10, 12 and 15 to 18 amend various sections of the Principal Determination to remove reference to “the Commonwealth”. These changes reflect that the benefits and any costs associated with them are payable under the Principal Determination. Some of the provisions that are being amended by these items have been rewritten to improve readability and to promote the use of contemporary drafting styles.

Item 11 repeals section 9.3.82 from the Principal Determination which provides that if the resident family upgrades their class of travel that they will only be eligible for up to the cost of travel by the most economical means. This section is not required as the maximum cost of travel is already specified under section 9.3.80 and section 9.3.81.

Items 13 and 14 amend Annex 12.3.B of the Principal Determination which provides the list of post index locations and the respective data service provider locations that are applicable to the posting locations overseas. The items amend the placement of the post index locations listed in Column A of Annex 12.3.B in alphabetical order.

Item 19 amends subsection 15.1.11.3 of the Principal Determination which provides the dates for the Christmas stand-down period for members on long-term posting overseas. The subsection has been amended to provide that the dates for the 2024-2025 stand down period are 24 December 2024 to 1 January 2025 inclusive.

Item 20 amends the heading of Chapter 16 Part 4 Division 4 of the Principal Determination which provides the recovery of travel costs and proof of travel for members posted to an overseas hardship location. It omits and substitutes the heading to reflect the content in the division.

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

Schedule 5—Transitional provisions

Clause 1 provides definitions which apply to the transitional provision.

Clause 2 provides who the transitional provision applies to, the circumstances in which it does not apply, and that it ceases to have effect from 30 June 2027.

Clause 3 provides the following.

- That a member may elect to receive the previous summer school benefits, including the conditions which apply to the member if an election is made.
- That if a member does not elect to receive the previous summer school benefits, they are eligible for the new school holiday program benefits as though the changes made by Schedule 3 of this Determination had applied from 1 June 2024.

This transitional provision allows members who have factored the benefits that were accessible immediately before the commencement of this Determination into their decision to take their children to the overseas posting location, to receive those benefits for the duration of their long-term posting overseas.

Defence Determination, Conditions of service Amendment Determination 2024 (No. 8)**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:

- Implement the increment advancement and deferral provisions for nuclear qualified submariners who are posted to a seagoing nuclear powered submarine.
- Update the rates of education assistance available to members domestically and while posted overseas.
- Provide a benefits to Defence personnel on a long-term posting overseas with reimbursement of school holiday program costs where their child attends a school that has a cumulative school holiday period of greater than 12 weeks per academic year.
- Provide the Christmas stand-down dates for the 2024-25 Christmas period.
- To remove reference to the Commonwealth to better reflect that the benefits and the payment of any costs associated with those benefits are made under the Principal Determination.
- Make technical amendments that promote the use of contemporary drafting styles to promote consistency within the Principal Determination and 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 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

Schedule 1 is compatible with Article 7 of the International Covenant on Economic, Social and Cultural Rights as it provides the salary increment provisions for a member who is a nuclear qualified submariner posted to a seagoing nuclear powered submarine as a part of their conditions of service.

Schedules 2, 3 and 5 are compatible with human rights as they promote the right of the child to education, the determination does this by the following.

- Adjusting the rates of education assistance for members both domestically and while posted overseas as a part of the member's conditions of service. This allows a member's child to access education that the member may not have otherwise been able to afford.
- Assisting members with dependants in overseas locations where there are more than 12 weeks of school holidays annually, with the additional costs of education support and supervision. The benefits provided support the member in continuing their duties at the overseas post location during the school holiday period.

Schedule 4 is compatible with human rights as it does not engage any of the applicable rights or freedoms as it makes amendments to the Principal Determination which do not change the underlying policies or benefits.

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*.