

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment Determination 2024 (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*. 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:

- Contemporise the content across the Principal Determination removing non-legislative administrative information and to improve readability and updating the drafting style by removing unnecessary deeming provisions and exceptions, writing the latter into rules.
- Provide an incentive payment to members who refer people to join the ADF through the approved form.
- Provide a salary non-reduction period of 5 years for Navy and Army members in the ADF medic workforce. This will preserve the salary of members who do not currently meet the new prerequisites for the revised skill grade while the members complete the prescribed service and training requirements to advance to a higher pay grade in the ADF Medic structure.
- Amend provisions relating to 'normal departmental liability' to reflect the use of the Whole of Australian Government travel arrangements by Defence.
- Relocate the Australians dangerously ill scheme – overseas provisions from Part 4 of Chapter 17 to Part 8 of Chapter 12. These provisions apply to all members of the ADF who are overseas for Defence purposes and the relocation of these provisions ensures that members who fall very seriously ill or seriously ill overseas receive the support from family while they are in hospital.
- Include a benchmark school for Bangladesh and change the benchmark school for Brunei.
- Amend utilities contribution provisions to clarify when a member must who occupies living-in accommodation must pay a contribution towards the cost of utilities.

### Operational details

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

### **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. Also, a person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Before this Determination was made, the consultation was undertaken with:

- Schedule 1: The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.
- Schedule 2: Defence Legal, Defence Force Recruiting and the Defence Tax Management Office.
- Schedule 3: Navy, Army and Air Force.
- Schedule 4: Travel Policy in Defence Finance Group, Defence Relocations and Housing, Military Personnel Branch and TOLL.
- Schedule 5: Navy, Army, Air Force and Defence Members and Family Support.
- Schedule 6: Navy, Army, Air Force, the Australian Signals Directorate Workplace Relations, the Australian Submarine Agency and the Directorate of Attaché and Overseas Management were consulted for the addition of the benchmark schools.

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

**Approved by:**

**BRIG Kirk Lloyd**  
Director General  
People Policy and Employment Conditions

**Authority:**

Section 58B of the  
*Defence Act 1903*

**Defence Determination, Conditions of service Amendment Determination 2024 (No. 11)****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 to 7 of the Determination commences on 10 October 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—Chapter 1 amendments**

Item 1 amends the heading to Chapter 1 to remove unnecessary words.

Item 2 repeals section 1.1.1 of the Principal Determination which provides an overview of the Determination. This section is repealed as it contains administrative information only.

Item 3 inserts after the heading of Part 1 of Chapter 1 of the Principal Determination a simplified outline of the Principal Determination, which is to assist readers' understanding of the Determination.

Item 4 repeals section 1.1.3 of the Principal Determination which contains acronyms and initialisations used. The acronyms and initialisations are relocated to section 1.3.1, consistent with drafting directions issued by the First Parliamentary Counsel.

Item 5 amends the heading of Part 2 of Chapter 1 of the Principal Determination which repeats the name of the Determination. The amendment changes the heading of the Part to better reflect the technical rules that it contains.

Items 6 to 8 repeal sections 1.2.1 to 1.2.3 of the Principal Determination which contain non-legislative administrative information.

Item 9 repeals section 1.2.4 of the Principal Determination which provides an express qualification on the use of definitions provided in Part 3 of Chapter 1 of the Principal Determination. The section is removed as the qualification is unnecessary and it is likely that the qualification is implied in any case.

Items 10 to 16 insert acronyms and initialisms into section 1.3.1 of the Principal Determination, consequential to the amendment made by item 3 of this Schedule. In accordance with section 11A of the AI Act, the amendments are inserted in alphabetical order.

Item 17 amends the heading of Part 5 of Chapter 1 to better reflect the content of the Chapter, which contains obligations of a person applying for, or in receipt of, a benefit under the Principal Determination.

Item 18 repeals and substitutes section 1.5.1 of the Principal Determination which outlines the purpose of Part 5 of Chapter 1. The purpose statement is replaced with a simplified outline of the Part.

Item 19 to 22 amends subsection 1.5.2.3 which requires members to provide accurate information in connection with an application for a benefit. Item 19 expands the requirement to include when the member is in receipt of a benefit. Items 20 to 22 amend the subsection to improve the drafting style of the section.

Item 23 amends section 1.5.3 of the Principal Determination which obligates a member to notify of any change in circumstance that may affect a benefit the member is receiving. The item amends subsection 1.5.3.4 to expand the types of housing assistance referred to, enabling member choice accommodation, and any future type of accommodation, to be captured under this obligation.

Item 24 amends section 1.6.1 of the Principal Determination which provides how specified benefits are paid when both the member and their partner would be eligible to receive the benefit. The item amends subsection 2 relating to nominating a person to receive the benefit and who receives the benefit if no one is nominated by changing the table to text structure to improve the readability of the subsection.

Items 25 to 26 amend section 1.6.2 of the Principal Determination which enables a benefit payable to the member to be paid to another person. The amendments improve the readability of subsection 1 and repeals subsection 1.6.2.2, as it is administrative in nature and not required to be determined.

Items 27 and 28 amend section 1.6.3 of the Principal Determination which enables a benefit payable to the member to be paid to another person if the member is suffering from a disability. The items amend subsection 1.6.3.2 to improve clarity and the readability of the section.

Item 29 amends section 1.6.4 of the Principal Determination which enables benefits payable to the member to be paid to another person if the member dies. The item remakes subsection 1.6.4.3 to improve readability.

The amendments made by this schedule are technical amendments and do not alter the underlying policies, or the benefits which are currently provided.

### Schedule 2—ADF referral payment amendments

Item 1 inserts Part 4 to Chapter 2 into the Principal Determination. This new Part provides the eligibility for a member to receive an incentive payment of \$1,000 when they refer a person to join the ADF through the approved form. The new Part includes the following:

- Section 2.4.1 provides the simplified outline of this Part.
- Section 2.4.2 provides the definitions used in this Part. The definitions included are for referred person, referring member and valid referral. The referred person cannot be a close relative of the referring member, a person who has previously served or a person who has a current application with ADF Careers or has applied in the last 12 months. The exclusion for current applications is put in place to prevent an abuse of the system where a person withdraws an application to get referred by a member.
- Section 2.4.3 provides the definition of a referring member. The section provides that a referring member cannot be performing duty in or have a close relative working in one of the recruitment areas within Defence. This provision inserts a control to prevent members working in recruitment centres from being able to refer a person through who attends a recruitment centre or event.
- Section 2.4.4 provides that this Part applies to members, including those who are Reserve members.
- Section 2.4.5 provides which members this Part does not apply to.
- Section 2.4.6 provides that a member can receive an incentive payment of \$1,000 when the conditions for the incentive payment are met.
- Section 2.4.7 provides the limitations on eligibility for the incentive payment. The section provides that only the first referring member can be eligible for the payment, and a member who leaves the ADF prior to the completion of the requirements would no longer be eligible. As the payment is an incentive to improve the recruitment and retention numbers of Defence, having a member who has left the ADF receive such a payment would be counter-intuitive.

### Schedule 3—Salary non-reduction amendments

Items 1 and 2 amend Annex 3.2.B of the Principal Determination which provides salary non-reduction periods for specified members with the rank of Warrant Officer Class 1 and Warrant Officer Class 2 or lower. The following changes have been made:

- Salary non-reduction periods have been added for members currently in the ADF medic workforce to preserve their salary where they do not currently meet the new prerequisites under the new ADF medic employment category structure for the revised skill grades. The salary non-reduction periods for these members commences on 16 October 2024, in line with the changes

made to DFRT Determination No. 2 of 2017, *Salaries* by DFRT Determination No. 8 of 2024, *Salaries – ADF Medic Employment Categories – amendment*, and ends on 15 October 2029.

- Expired salary non-reduction periods have been removed as they no longer have any effect.

#### Schedule 4—Normal departmental liability amendments

Item 1 amends section 9.1A.1 of the Principal Determination which provides definitions used in Chapter 9. The definition of normal departmental liability has been substituted to refer to the definition provided in section 9.1.7.

Item 2 repeals and substitutes section 9.1.8 of the Principal Determination which provides how the cost of air travel is calculated for the purpose of working out normal departmental liability (NDL). The section has been re-drafted to provide that the cost of air travel for the purpose of NDL, depending on the type of travel, is based on the rate that is provided for the air fare in the Whole of Australian Government travel arrangements. The rates under the Whole of Australian Government travel arrangements are commercial-in-confidence, however can be accessed by members and administrators on the Defence intranet. The section has also been redrafted to promote the use of contemporary drafting styles and to improve readability.

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

#### Schedule 5—Australians dangerously ill scheme – overseas

Item 1 amends section 1.3.1 of the Principal Determination which provides definitions used within the determination. The definitions of 'hospital' and 'medical authority' have been added as defined terms consequential to their removal from section 9.3.64 and section 17.1.2 by items 3 and 6 of this Schedule. In accordance with section 11A of the AI Act, the definitions are inserted in alphabetical order.

Item 2 amends the table in section 1.3.5 of the Principal Determination which provides the definition of 'serious illness'. The table has been amended to change to reference to the Australians dangerously ill scheme – overseas, which is being moved within the Principal Determination by item 4 of this Schedule.

Item 3 amends section 9.3.64 of the Principal Determination which provides the definitions used in Chapter 9 Part 3 Division 9 for the Australians dangerously ill scheme – within Australia. The definitions of 'hospital' and 'medical authority' have been removed consequential to the change made by item 1 of this Schedule.

Item 4 inserts Part 8 into Chapter 12 of the Principal Determination. The new Part provides the Australians dangerously ill scheme for members who are very seriously ill or seriously ill while overseas for Defence purposes. These provisions were previously provided under Chapter 17 Part 4 of the Principal Determination and have been relocated to Chapter 12 as they apply to all members who are overseas, not just those who are on deployment. The provisions have been restructured and redrafted to reflect modern drafting standards and to improve readability. The new Part structure is as follows:

Division 1 provides the General provisions that relate to the Part.

- Subdivision 1 provides the interpretation provisions under Division 1.
  - Section 12.8.1 provides a simplified outline of the Part.
  - Section 12.8.2 provides defined terms that are used within the Part.
  - Section 12.8.3 provides the definition of 'approved visitor'. An approved visitor is the person who may travel to the overseas location for the purposes of visiting and providing support to the member using the Australians dangerously ill scheme – overseas benefits provided to the member under Division 3 of Part 8.
  - Section 12.8.4 provides the definition of 'additional approved visitor'. An additional approved visitor is a person who may accompany the member's approved visitor to the overseas location.
- Subdivision 2 provides the application provisions under Division 1.

- Section 12.8.5 identifies members who the part applies to. The member must be overseas for Defence purposes and be classified as very seriously ill or seriously ill. A member who is on a period of leave while overseas for Defence purposes may also be eligible for benefits provided under the Part if the decision maker is satisfied that the provision of those benefits is reasonable.

Division 2 provides when the approved period under the Part may be extended or ceased.

- Section 12.8.6 provides that the approved period of 7 days for a visit by an approved visitor may be extended if the decision maker is satisfied that a longer period would significantly benefit the member.
- Section 12.8.7 provides that the approved period ceases 24 hours after the approved person has been notified that either, the member's condition has improved or the member has been provided with a sustainable welfare management plan. It also provides that the decision maker may extend the 24 hour period if the approved person is unable to arrange return travel within that time.
- Section 12.8.8 provides that if the member dies the approved period ceases when the approved visitor returns to Australia or to the member's long-term posting location overseas, the day the member is repatriated to Australia, or a day the decision maker decides is reasonable. If the approved visitor returns to the long-term posting location overseas, section 12.7.6 of the Principal Determination which provides benefits for dependants when the member dies will apply.

Division 3 provides the eligibility criteria and the benefits a member may receive for their approved visitor.

- Subdivision 1 provides the eligibility and the reimbursement of costs for benefits provided under Subdivision 2.
  - Section 12.8.9 provides that the member is eligible for the benefits provided under Subdivision 2 for their approved visitor and an additional approved visitor for the approved period.
  - Section 12.8.10 provides that costs for benefits which are reimbursable under Subdivision are payable to the member or to the approved visitor.
- Subdivision 2 provides the benefits that the member may be eligible for their approved visitor and an additional approved visitor.
  - Section 12.8.11 provides that official travel insurance, including medical insurance, is provided by Defence for the approved visitor and any additional approved visitor.
  - Section 12.8.12 provides that the costs associated with, and necessary for, travel to the member's location, such as application costs for passports and visas, are reimbursable.
  - Section 12.8.13 provides return travel, or the reimbursement of travel costs, for the approved visitor and any additional approved visitor to travel to the location where the member is in hospital.
  - Section 12.8.14 provides that costs associated travel by public transport are reimbursable.
  - Section 12.8.15 provides that accommodation will be arranged by Defence for the approved period. Any accommodation arranged by the approved visitor or additional approved visitor is not reimbursable under this Division.
  - Section 12.8.16 provides that the cost of meals for the approved visitor and any additional approved visitor, up to the daily limit provided for meals under Annex 13.3.A of the Principal Determination, are reimbursable. The costs of alcoholic beverages are not reimbursable under this Division.

Item 5 repeals section 13.1.4 of the Principal Determination which provides that a member on short-term duty overseas who is seriously or very seriously ill is eligible for support under the Australians dangerously ill scheme – overseas under Chapter 17 Part 4. This section is no longer required due to the relocation of the scheme made by item 4 of this Schedule.

Item 6 repeals section 17.1.2 of the Principal Determination which provides defined terms used within Chapter 17. This section is no longer required as the terms are now provided under section 1.3.1 or Part 8 of Chapter 12.

Item 7 repeals and substitutes subsection 17.1.4.1 of the Principal Determination which provides the Parts and Divisions of Chapter 17 that have a limited application for specified members. The subsection has been amended to remove reference to Chapter 17 Part 4 consequential to the relocation of the provisions to Part 8 of Chapter 12 made by item 4 of this Schedule.

Item 8 repeals Part 4 of Chapter 17 of the Principal Determination which provides the Australians dangerously ill scheme – overseas. The provisions are now provided under Part 8 of Chapter 12 as made by item 4 of this Schedule so the Part is no longer required.

#### Schedule 6—Miscellaneous amendments

Item 1 amends the definition of “approved form” in section 1.3.1 of the Principal Determination. The item changes the title of the Assistant Secretary to the new title of Director General.

Item 2 amends the definition of “long-term posting” in section 1.3.1 of the Principal Determination. The item omits an incorrect reference to 12.3.10 which does not exist to the correct reference of 12.3.1.

Item 3 amends subsection 3.2.14.2 of the Principal Determination. The item makes a technical amendment to correct a typographical error.

Item 4 amends subsection 3.4.12.4 of the Principal Determination which provides for the payment of a continuation bonus. This item was a misdescribed amendment in Defence Determination, Conditions of service Amendment Determination 2024 (No. 10), which could not be given effect. The item amends the section to clarify the source of power a notice is issued under the Defence Regulation.

Item 5 repeals section 5.6.16 of the Principal Determination which provides guidance information for members of the Reserves. The section is repealed as it is administrative in nature and is not required to be determined.

Item 6 amends section 5.9.12A of the Principal Determination which provides additional carer’s leave. The item replaces the second occurrence of ‘for’ with ‘of’, correcting a typographical error.

Item 7 amends section 6.1.17 of the Principal Determination which provides the criteria for childcare assistance in connection with a removal. The item replaces the second occurrence of ‘a’ with the possessive adjective ‘their’ in paragraph 3.c to improve its coherence.

Item 8 amends section 7.6.48 of the Principal Determination which details what happens to a member’s housing benefits under Part 6 of Chapter 6 if they are promoted or appointed as an officer. The item remakes subsection 7.6.48.6 to improve readability of the rule.

Item 9 amends section 7.6.54 of the Principal Determination which specifies how a contribution is paid if the member’s partner is also a member. The item remakes subsection 7.6.54.4 to improve the readability of the rule.

Item 10 repeals and substitutes subsection 7.10.9.3 of the Principal Determination which provides when a member who is not required to contribute towards occupying living-in accommodation is not required to contribute towards the cost of utilities. The subsection has been amended to clarify when a member is required to contribute towards the cost of utilities, despite not being required to contribute toward the cost of their living-in accommodation.

Item 11 amends section 9.3.54 of the Principal Determination which specifies conditions for compassionate travel if the member’s partner were to travel. The item amends paragraph 9.3.54.b to improve readability of the rule.

Item 12 amends section 9.5.4 of the Principal Determination which specifies who Part 5 of Chapter 9 applies to. The item removes the note from paragraph 9.5.4.1.a and incorporates it into the rule to ensure the Part applies to members travelling for more than 10 hours. Not all benefits provided in this Part will be available to these members.

Item 13 amends section 9.5.9 of the Principal Determination which specifies when a travel period for overnight travel starts and ends. The item repeals the exception in paragraph 9.5.9.1.c which is not required because of the amendments made by item 12 of this Schedule.

Items 14 and 15 amend the wording in subsection 14.2.13.b and 14.2.14.3 of the Principal Determination to correct typographical errors.

Item 16 amends section 15.3.17 of the Principal Determination which provides for reverse dependant reunion travel overseas. The item amends subsection 15.3.17.3 to improve readability as to how the benefit is calculated.

Item 17 amends section 15.3.38 of the Principal Determination which provides a member with additional travel benefits if their overseas posting has been extended. The item amends the cross-reference in subsection 15.3.38.5.

Items 18 and 19 amend Annex 15.6.A of the Principal Determination which provides a list of schools that set the 'benchmark' for the amount of education assistance a member can be reimbursed when they have a child attending an education institution at the member's posting location overseas. The amendments are as follows:

- Item 18 inserts item 1A to include the American International School Dhaka as the benchmark school for Bangladesh. The inclusion of Bangladesh is in anticipation of a member's next posting to that location in 2025.
- Item 19 repeals and substitutes item 2 of the table to provide that for members posted to Brunei, the benchmark school is 'Jerudong International School'.

Item 20 amends section 17.7.24 of the Principal Determination which permits a member to offset the cost of travel to a relief centre travel to another location. The item amends subsection 17.7.24.6 to remove unnecessary text.

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

#### Schedule 7—Transitional Provisions

Clause 1 defines Defence Determination 2016/19 for the purpose of this Schedule, which is incorporated as in force from time to time.

Clause 2 provides that a member who were posted to Brunei is eligible for the reimbursement of compulsory tuition fees payable for their child to attend a school that they would have been eligible for under paragraph 15.6.10.1.a of the Defence Determination, as though the changes made by Schedule 6 item 19 of this Determination had been in force between 14 June 2024 and the commencement of that Schedule.



**Defence Determination, Conditions of service Amendment Determination 2024 (No. 11)****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:

- Contemporise the content across the Principal Determination removing non-legislative administrative information and to improve readability and updating the drafting style by removing unnecessary deeming provisions and exceptions, writing the latter into rules.
- Provide an incentive payment to members who refer people to join the ADF through the approved form.
- Provide a salary non-reduction period of 5 years for Navy and Army members in the ADF medic workforce. This will preserve the salary of members who do not currently meet the new prerequisites for the revised skill grade while the members complete the prescribed service and training requirements to advance to a higher pay grade in the ADF Medic structure.
- Amend provisions relating to 'normal departmental liability' to reflect the use of the Whole of Australian Government travel arrangements by Defence.
- Relocate the Australians dangerously ill scheme – overseas provisions from Part 4 of Chapter 17 to Part 8 of Chapter 12. These provisions apply to all members of the ADF who are overseas for Defence purposes and the relocation of these provisions ensures that members who fall very seriously ill or seriously ill overseas receive the support from family while they are in hospital.
- Include a benchmark school for Bangladesh and change the benchmark school for Brunei.
- Amend utilities contribution provisions to clarify when a member must who occupies living-in accommodation must pay a contribution towards the cost of utilities.

**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.

*Right to the protection and assistance for the family*

The protection of a person's right to the protection and assistance for the family engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 ensures the possible protection and assistance should be accorded to the family as a part of their conditions of service.

**Assessment of compatibility**

Schedule 1 make technical amendments to the Principal Determination which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

Schedule 2 is compatible with human rights as it provides an incentive payment for members to refer people to join the ADF. This encourages members to refer suitable people to join up and remain a member for a year.

Schedule 3 promotes the right to just and favourable conditions of work by providing a 5-year salary non-reduction period for Army and Air Force members in the ADF medic workforce. This will preserve the salary of members who do not currently meet the prerequisites in the new ADF Medic structure.

Schedule 4 is compatible with human rights as it updates the rate on which normal departmental liability is calculated, ensuring that travel costs for members remain current and in line with Whole of Australian Government travel arrangements.

Schedule 5 is compatible with human rights as it promotes the rights of the member and their family by providing the member with assistance to enable a person to visit them overseas when the member is seriously or very seriously ill.

Schedule 6 is compatible with human rights as the amendments to the benchmark schools promote a child's right to education and ensures that the education provided to them is of quality and standard tantamount to what is offered in Australian schools. The rest of the amendments make technical amendments to the Principal Determination which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

### **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*.