EXPLANATORY STATEMENT

###### Defence Determination, Conditions of service Amendment Determination 2024 (No. 13)

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 sunsetting 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:

* Provide a salary non-reduction period for Navy Public Relations Officers. This will preserve the salary of officers until 19 December 2029 who do not currently meet the new prerequisites the new Military Public Affairs Officer employment categories established by DFRT Determination No. 13 of 2024.
* Amend paid maternity leave and paid parental leave by increasing the period of leave that can be taken by a member. This will enhance the leave benefits for members who become parents and reflect contemporary societal standards.
* Amend the duration in which a period of paid parental leave can be taken at half pay. This will avoid a member who takes paid parental leave at half pay from receiving full pay for service over a weekend if they are paid parental leave at half pay on the preceding Friday and following Monday.
* Introduce gender-neutral language in maternity leave to remove gender specific terms and to promote consistency within Principal Determination.
* To simplify the ADF family health program by removing the requirement to obtain a referral from a healthcare physician for healthy eating and physical activity claimable services and to add new fitness services and products that the member is eligible to be reimbursed for of costs.
* Provide deployment allowance for two new operations, Operation BEECH and Operation HYDRATH. The deployment allowance for the Operation BEECH is payable from 8 November 2023, and for Operation HYDRANTH is payable from 15 February 2024.

**Operational details**

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

**Incorporation by reference**

The Determination makes references to sections of the *Defence Determination 2016/19, Conditions of service*. This Instrument is incorporated into this Determination as in force from time to time.

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. 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, Directorate of Remuneration Operations, Defence Legal, Military Personnel Branch and People Services and People Systems Branch, Defence Finance Group, Military Strategic Commitments and Department of Veterans Affairs.

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

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| **Approved by:** | **BRIG Kirk Lloyd**  Director General  People Policy and Employment Conditions |
| **Authority:** | Section 58B of the  *Defence Act 1903* |

**Annex A**

***Defence Determination, Conditions of service Amendment Determination 2024 (No. 13)***

***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, 3, 4and 5 of the Determination commences on 5 December 2024.
* Schedule 2 and 6 of the Determination commence on 13 February 2025.

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 – Officers amendments*

Item 1 amends Annex 3.2.D of the Principal Determination which provides salary non-reduction periods for officers. The item adds a salary non-reduction period for officers currently in a Public Relations employment category to preserve their salary where they do not currently meet the new prerequisites of the new Military Public Affairs Officer employment categories established by DFRT Determination No. 13 of 2024.

*Schedule 2—Increase to Maternity and Parental leave amendments*

Items 1, 3 to 5, 7 to 9, 11 to 24, 26 and 27 amend various provisions within Part 6 of Chapter 5 of the Principal Determination which provides maternity leave provisions for the ADF. The amendments made by these sections remove gender pronouns to reflect modern drafting standards.

Item 2 repeals section 5.6.9 of the Principal Determination which identifies members who are not entitled to maternity leave. The information in this section is non-legislative in nature and does not need to be determined.

Items 6 and 25 amend various sections of the Principal Determination to increase the period of paid maternity leave a member is eligible for from 14 weeks to 18 weeks.

Item 10 amends section 5.6.24 of the Principal Determination which sets out the period of required absence for a member who is pregnant. The section has been amended to remove ‘who is pregnant’ to reflect that the provisions also apply to the member after the birth of the child or termination of the pregnancy.

Item 28 amends section 5.7.4C of the Principal Determination which provides the period of parental leave dual serving parents are eligible. The item increases the combined total of paid maternity, parental and special paid parental leave from 18 weeks to 26 weeks.

Item 29 amends section 5.7.5 of the Principal Determination which provides the period of paid parental leave a member is eligible for. The item increases the period of paid parental leave from 20 days to 40 days.

Item 30 amends section 5.7.5 of the Principal Determination, which provides rules for paid parental leave, including the minimum period it can be taken for. The item amends the section by repealing and substituting paragraph b to increase the minimum duration that paid parental leave can be taken at half pay to 7 days.

Item 31 amends section 5.7.6E of the Principal Determination which sets out how a period of special paid parental leave must be taken. The item increases the period in which special paid parental leave must be taken from 14 weeks to 18 weeks.

*Schedule 3—ADF family health program amendments*

Item 1 amends section 8.9.2 of the Principal Determination which provides definitions used within Chapter 8 Part 9 to remove the definition of ‘healthcare physician’ as it is no longer used in the Part.

Item 2 amends sections 8.9.7C of the Principal Determination which provides that a claimant is eligible for the reimbursement of the out of pocket expenses for healthy eating programs. The amendment removes the requirement to obtain a referral from a healthcare physician for healthy eating services that are reimbursable under the program.

Item 3 repeals and substitutes section 8.9.7D of the Principal Determination which provides that a claimant is eligible for the reimbursement of the costs for specified physical activities. The following changes have been made to the section.

* The requirement to obtain a referral from a healthcare physician for physical activity services that are reimbursable has been removed.
* It has been clarified that providers for physical activity services under this section are to have a registered Australian Business Number.
* Three new physical activity services have been included as reimbursable services: swimming pool memberships, Fitness Passport memberships and aqua fitness classes. The Fitness Passport is an entity that provides its members and their families with access to a wide choice of fitness facilities close to their home and work.

*Schedule 4—Deployment allowance amendments*

Items 1 to 3 amend the table under subsection 17.7.6.1 of the Principal Determination which provides deployment allowance rates for members deployed on operations. The items make the following changes.

* Item 1 inserts new table item 3A for Operation BEECH into the table which provides the location and daily rate of deployment allowance in AUD.
* Item 2 inserts new table item 4A for Operation HYDRANTH into the table which provides the location and daily rate of deployment allowance in AUD.
* Item 3 substitutes the cells in column B of table item 9 to amend the long-form names of a number of countries mentioned in the cell to their commonly used named. This aligns the language of this cell with the rest of the table.

*Schedule 5—Transitional provisions*

Clause 1 defines the Defence Determination for this Schedule as the Defence Determination 2016/19, Conditions of service.

Clause 2 provides that a member who was eligible for reimbursement under section 8.9.6A of the Defence Determination can be reimbursement the out of pocked expenses provided by section 8.9.7D of the Defence Determination as though the changes made by Schedule 3 of this Determination had applied at the time.

Clause 3 provides that a member who was deployed to Operation BEECH under Schedule 4 of this Determination is eligible for the payment of deployment allowance for each day the member performed duty in the specified area during the specified period. The clause also provides that a member who has been paid an amount under section 17.7.6 during the specified period, the amount payable under the clause is reduced by the amount they have already received.

Clause 4 provides that a member who was deployed to Operation HYDRANTH under Schedule 4 of this Determination is eligible for the r payment of deployment allowance for each day the member performed duty in the specified area during the specified period. The clause also provides that a member who has been paid an amount under section 17.7.6 during the specified period, the amount payable under the clause is reduced by the amount they have already received.

*Schedule 6—Savings provisions*

Clause 1 defines Defence Determination 2016/19 for the purpose of this Schedule, which is incorporated as inforce immediately before the commencement of Schedule.

Clause 2 saves the period of paid maternity leave or parental leave provided under Part 6 and Part 7 of Chapter 5 of the Defence Determination for a member who was eligible for maternity leave or parental leave for a child who was born, adopted, or otherwise joined the member’s household in a situation recognised under the Principal Determination, on or before 12 February 2024. This means that the period of paid maternity or parental leave a member is eligible for is the period immediately before Schedule 2 items 6, 25, 28, 29 and 31 commenced.

Clause 3 saves the operation of section 5.7.5 for the Defence Determination for members who had been approved to take paid parental leave under the rules that applied immediately before Schedule 2 item 30 commenced. This means that the specified members will not be affected by the change and will be able to take the approved paid parental leave at a minimum of 1 day.

**Defence Determination, Conditions of service Amendment Determination 2024 (No. 13)**

***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:

* Provide a salary non-reduction period for Navy Public Relations Officers. This will preserve the salary of officers until 19 December 2029 who do not currently meet the new prerequisites the new Military Public Affairs Officer employment categories established by DFRT Determination No. 13 of 2024.
* Amend paid maternity leave and paid parental leave by increasing the period of leave that can be taken by a member. This will enhance the leave benefits for members who become parents and reflect contemporary societal standards.
* Amend the duration in which a period of paid parental leave can be taken at half pay. This will avoid a member who takes paid parental leave at half pay from receiving full pay for service over a weekend if they are paid parental leave at half pay on the preceding Friday and following Monday.
* Introduce gender-neutral language in maternity leave to remove gender specific terms and to promote consistency within Principal Determination.
* To simplify the ADF family health program by removing the requirement to obtain a referral from a healthcare physician for healthy eating and physical activity claimable services and to add new fitness services and products that the member is eligible to be reimbursed for of costs.
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**Human rights implications**

*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*

Recognise 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 that 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 to an attainable standard of physical and mental health*

The protection of a person’s right to an attainable standard of physical and mental health engages Article 12 of the International Covenant on Economic, Social and Cultural Rights. Article 12 recognises the right of everyone to achieve the full realisation of this right through the provision of medical assistance.

*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.

***Assessment of compatibility***

The amendments made by this Determination are compatible with human rights as they:

* Provide a salary non‑reduction period until 19 December 2029 for Navy Public Relations Officers which will preserve the salary of officers who do not currently meet the prerequisites of the new Military Public Affairs Officer employment categories.
* Promote a standard of living adequate for a child's physical, mental, spiritual, moral and social development protection by increasing the period of maternity and parental leave that a member can access, reflecting contemporary societal standards.
* Provide favourable conditions of work by providing reimbursement of out-of-pocket expenses to members for health and well-being related services and products as a part of their conditions of service.
* Provide members on deployment allowance which compensate for the hazard, stress and environmental factors that they are likely to experience over the term of a warlike or non-warlike deployment as a part of their conditions of service.

**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*.