

# **EXPLANATORY STATEMENT**

## **Defence Determination, Conditions of service Amendment Determination 2024 (No. 14)**

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:

- Provide members with access to removals in circumstances that are the result of a relationship breakdown.
- Extend the timeframe in which housing, storage and removal benefits can be provided a member's resident family, recognised other persons or the legally entitled person upon the death of a member.
- Amend Service residence provisions to allow eligibility to occupy a Service residence to continue in circumstances where the categorisation of a member's resident family or recognised other persons changes.
- Provide a new benefit for member's who have a child 3 years old or younger who accompany them on long-term overseas posting which allows members to claim a portion of out of pocket expenses they incur for their child to attend a centre-based early education facility.
- Make technical amendments that:
  - Amend rent allowance provisions to insert legislative notes which improve readability and provide clarity to the reader on how rent allowance provisions interact with each other.
  - Remove information that is administrative in nature and does not need to be determined.

### **Operational details**

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

### **Human rights compatibility**

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

### **Review options**

Decisions that are made under the Principal Determination, as amended by this Determination, may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation. 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, Defence Relocations and Housing, Defence Housing Australia, TOLL, Recruitment and Retention Project Team, Defence Taxation Management Office, Defence Member and Family Services, Directorate of Attaché and Overseas Management, Australian Signals Directorate, Australian Submarine Agency and Department of Foreign Affairs and Trade.

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. 14)

### Operational details

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

Section 2 provides the Determination commences on 19 December 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—Breakdown of relationship amendments

Item 1 amends section 6.1A.2 of the Principal Determination which provides the definitions for Chapter 6 Part 6 of the Principal Determination. The amendment inserts a new definition for ‘a family court’, which ensures the inclusion of Western Australia’s family law system.

Item 2 amends section 6.1.5 of the Principal Determination which provides the eligibility for members to receive disturbance allowance. The amendment inserts paragraph 6.1.5.f, which provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible for the allowance.

Item 3 inserts a new section 6.1.16A into the Principal Determination. The new section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive childcare costs associated with the removal.

Item 4 inserts section 6.1.25A into the Principal Determination. The new section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive benefits to relocate other animals in connection with the removal.

Item 5 inserts section 6.2.1AA into the Principal Determination. The new section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive reimbursement for any loss accrued on sale of furniture, effects and private vehicles.

Item 6 inserts section 6.3.2A into the Principal Determination. The new section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive travel benefits to assist with the uplift and unpack in connection with the removal.

Item 7 amends section 6.5.4 of the Principal Determination which provides additional removal benefits to members or resident family who are ineligible for a removal. The amendment inserts paragraph 6.5.4.2.da to allow the CDF to grant a removal to someone otherwise ineligible under Chapter 6 Part 5 Division 10.

Item 8 amends section 6.5.29 of the Principal Determination which provides removal benefits to a member moving between residences in the same location upon commencing a posting or deployment. The amendment replaces a note in table items 1 and 4 of the table at subsection 6.5.29.1, to advise readers that Chapter 6 Part 5 Division 10 provides removal benefits when a relationship breaks down.

Item 9 repeals and substitutes Division 10 of Chapter 6 Part 5 of the Principal Determination which provides removal benefits for a non-Service partner of a member when a relationship has broken down. The amendments made by this Item expand the benefits to members in addition to what is already provided for the member’s non-Service former partner (collectively referred to as persons). The Division is structured as follows:

- Section 6.5.76 provides the simplified outline for this Division. This is included to assist readers to understand the benefits provided by the Division, but it is not intended to be comprehensive.
- Section 6.5.76A provides the definition of decision maker for the purposes of this Division.

- Section 6.5.77 provides that the Division applies to both a member posted in Australia and their non-Service partner.
- Section 6.5.78 provides the eligibility rules for a person to receive a removal following the breakdown of the relationship and requires an application to be submitted in writing within 90 days for a member, and within 12 months for the non-Service partner.
- Section 6.5.79 provides the number of removals the person may receive. A member cannot receive more than one removal in 24 months, and a person can only receive one removal for the breakdown of a relationship with the same person unless the decision maker is satisfied it is reasonable to provide an additional removal.
- Section 6.5.80 provides the locations between which removals can be effected. The removal can be between specified locations, including storage facilities if they have items stored under the Determination or another location as approved by a decision maker. An additional location may also be approved by the decision maker. This may be used in circumstances where it would be reasonable to grant a removal to that location, for example in the case of family and domestic violence.
- Section 6.5.81 provides what can be removed under this Division. The section provides that furniture and effects, private vehicle and towable item removal, and pet relocation may be removed. The section also provides a limitation on receiving a vehicle removal when receiving other assistance.
- Section 6.8.82 provides what items cannot be removed in a removal under this Division. The section ensures that items cannot be removed without consent, a legal order or binding agreement.
- Section 6.5.83 provides when a removal will be effected. The locations for pick up and drop off of the items, as well as the inventory of the items being collected, are required to be provided before the removalists can undertake the removal.
- Section 6.5.83A provides that a person can have one private vehicle and one towable item removed, which includes a recreation vehicle. If a private vehicle is driven, vehicle allowance may be payable. The section provides that the person may be reimbursed for the costs of delivery and collection from the transport agency's depot, which mimics the provisions available to a member under section 6.5A.13.
- Section 6.5.83B provides the costs a person may be eligible to be reimbursed for privately arranged removals. The section also provides a decision point, addressing situations where a person is not a member and requires an urgent removal.
- Section 6.5.83C provides the costs a person who is not a member is eligible to be reimbursed when the person has needed to hire replacement household items when items are during the removal.

Item 10 inserts section 6.5A.4A into Chapter 6 Part 5A Division 1 of the Principal Determination which provides the general provisions for the vehicle removal assistance benefits. The section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive vehicle removal assistance under Chapter 6 Part 5A.

Item 11 inserts section 9.2.8A into Chapter 9 Part 2 Division 3 of the Principal Determination which provides travel benefits for removal purposes. The section provides that a member who receives a removal under Chapter 6 Part 5 Division 10 is not eligible to receive travel benefits under the Chapter 9 Part 2 Division 3.

Item 12 repeals section 9.3.23 of the Principal Determination which provides pet relocation upon the breakdown of a relationship. This section is being repealed as it replicates information provided in a Division related to travel rather than removals, and only signposts to the relevant provision in Chapter 6 Part 1 Division 3. The benefit is not being removed, as it is provided for in the section 6.5.80 as a consequence of the change made by item 3 of this Schedule.

*Schedule 2—Extension of benefits on death of member amendments*

Items 1 and 2 amend section 6.5.61 of the Principal Determination which provides storage benefits to a member's resident family or recognised other persons after the death of the member. The following amendments have been made to the section:

- Item 1 amends subsection 6.5.61.3 to correct a typographical error.
- Item 2 amends paragraph 6.5.61.3.a to increase the timeframe that storage is available to a person from 6 months to 15 months following the member's death.

Item 3 amends section 6.5.85 of the Principal Determination which provides removal benefit for resident family or recognised other persons after the death of the member. The section is amended to include the removal of up to two private vehicles and towable items to a location within Australia.

Item 4 repeals and substitutes section 6.5.87 of the Principal Determination which provides time limits on the removal benefit for resident family or recognised other persons after the death of the member. The section is amended to increase the time limit from 6 months to 15 months after the death of the member, and to update the section to promote the use of contemporary drafting styles.

Items 5 to 7 amend various provisions of the Principal Determination to increase the timeframe for benefits from 6 months to 15 months after the death of the member. The following amendments have been made:

- Item 5 amends paragraph 7.6.60.2.a which provides the time limit for how long resident family or recognised other persons can be eligible to remain living in a service residence.
- Items 6 and 7 amend paragraph 7.8.37.2 which provides the time limit for how long resident family or recognised other persons can be eligible to receive rent allowance.

#### Schedule 3—Continuation of housing amendments

Item 1 amends table item 2 of the table in subsection 7.6.41.1 of the Principal Determination which provides the contribution a member is to make when they have no resident family or recognised other persons and they have been approved to occupy a surplus Service residence. The table item is amended to clarify that where a member is sharing with one other person, the contribution they are to pay is the contribution for their rank group and living arrangement under Annex 7.A Part 4 Column C of the Principal Determination.

Item 2 inserts the following sections into the Principal Determination:

- Section 7.6.41A provides the contribution for a member whose resident family or recognised other persons no longer occupy the Service residence. The addition of this section is a consequence of changes made to section 7.6.59 by item 6 of this Schedule.
- Section 7.6.41B provides the contribution for a member approved to remain in a Service residence without resident family. The addition of this section is a consequence of section 7.6.59A, which is added by item 6 of this Schedule.
- Section 7.6.41C provides the contribution for a member approved to have their recognised family remain in the Service residence in connection with a breakdown of relationship. The addition of this section is a consequence of section 7.6.59C being added by item 6 of this Schedule.

Item 3 repeals and substitutes section 7.6.59 of the Principal Determination which provides when eligibility to a Service residence ends if a member's resident family or recognised other persons will no longer live with the member. The section has been redrafted to clarify that it applies when a member becomes a member with no resident family or recognised other person, or a member who has unaccompanied resident family.

Item 3 also adds the following sections to the Principal Determination:

- Section 7.6.59A, which provides when a member who has requested to occupy their Service residence beyond the day they stop being eligible under section 7.6.59 can remain in the Service residence until.

- Section 7.6.59B, which provides when a member's eligibility to remain in their Service residence ends if they are a dual service couple and both members of the couple request to continue occupation.
- Section 7.6.59C, which provides when a member's recognised family is eligible to continue occupation of the Services residence they occupied with the member if the member no longer lives in the home as a result of a relationship breakdown.

Items 4 and 5 amends section 7.8.5 of the Principal Determination which provides circumstances when a member becomes eligible for rent allowance, including the date eligibility starts and ends. The section has been amended to include notes under subsection 7.8.5.1, 2 and 3 which provides that events that end or effect a member eligibility to rent allowance are provided under Division 5 of Chapter 7 Part 6.

Item 6 amends section 7.8.47 of the Principal Determination which provides a member with reimbursement where they have paid rent in advance of moving into a rental property to secure the property. Paragraph 7.8.47.1.c has been removed as the information is administrative in nature and does not need to be determined.

#### Schedule 4—Early childhood education assistance amendments

Item 1 amends section 15.1.3A of the Principal Determination which provides the definition of 'benchmark school'. Subsection 15.1.3A.a, which provides that the benchmark schools for the various overseas posting locations is located in Annex 15.6.A of the Principal Determination. The paragraph has been amended to add benchmark schools for child in early childhood education in column B of Annex 15.6.A. This amendment is a consequence of the changes made by item 8 of this Schedule.

Items 2 and 3 amend section 15.6.2 of the Principal Determination which provides who Chapter 15 Part 6: Education assistance for children, applies to. The section has been amended in the following ways:

- Paragraph 15.6.2.b has been amended to remove reference to a dependant who is a child that is more than 3 years old.
- Paragraph 15.6.2.c has been amended to include reference to a child being enrolled in a centre-based early childhood education facility.

These changes are as a consequence of the addition of Chapter 15 Part 6 Division 1A by item 4 of this Schedule, which provides early childhood education assistance for a child who is less than 3 years old who attend a centre-based childhood education facility.

Item 4 inserts Division 1A into Chapter 15 Part 6 of the Principal Determination. The new division provides early childhood education assistance for members who are on long-term posting overseas when they have a child who attends a centre-based early childhood education facility. The new division includes the following:

- Section 15.6.6A, which provides the purpose of early childhood education assistance.
- Section 15.6.6B, which provides that the division applies to a member who has a dependant who is 3 years of age or younger, lives at the member's overseas posting location, is unable to be enrolled in pre-school and is attending an early childhood education facility.
- Section 15.6.6C, which provides that the division does not applies to a member when they are on leave without pay, or receiving another form of education assistance for their child.
- Section 15.6.6D, which provides the definition which apply to the Division, including definitions of 'compulsory fees', 'early childhood education facility' and 'yearly benefit'.
- Section 15.6.6E, which provides what activity hours means. To access benefits under the division, both the member, and if applicable, their accompanying partner must be undertaking activity hours. For a member this means they are required to attend for duty or travelling between their place of work and the early childhood education facility the child attends. For a member's partner, this means they are undertaking paid work, on a period of paid leave, undertaking study or travelling between their place of work or study and the early childhood education facility the child attends.

- Section 15.6.6F, which provides when a member is eligible for early childhood education assistance, and the criteria which must be met. The section also provides that early childhood education assistance is limited to 10 hours per day, 5 days per week and that if the member's yearly benefit is AUD 0 or less, there is no eligibility for early childhood education assistance.
- Section 15.6.G which provides a formula that is used to calculate the rate of early childhood education assistance per hour. The section also provides that where there is a rate change, the rate of early childhood education assistance is the rate that applied on the day the costs were incurred.
- Section 15.6.6H provides that a member ceases to be eligible to claim early childhood education assistance for a day 3 months after the invoice for the day has been issued.

Item 5 amends section 15.6.7 of the Principal Determination which provides who Chapter 15 Part 6 Division 2 applies to. The section has been amended to clarify that the Division applies to a member who has a child who is 3 years or older.

Items 6 and 7 amends paragraph 15.6.10.1.b which provides that a member with a child who is attending pre-school at a USA and the child will not be 5 years old on 31 December in the current USA school year is eligible for the compulsory tuition fees charged by the benchmark school for the child to attend 15 hours per week. The paragraph has been amended to remove the limitation of 15 hours per week and the associated note.

Item 8 repeals and substitutes Annex 15.6.A of the Principal Determination which provides the benchmark schools for Pre-school/Kindergarten, primary school and secondary school for various overseas posting locations. The Annex has been amended to include benchmark early childhood education facilities as a consequence of the changes made by item 4 of this Schedule.

## Defence Determination, Conditions of service Amendment Determination 2024 (No. 14)

### Statement of Compatibility with Human Rights

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

#### Overview of the Determination

The purpose of this Determination is to do the following:

- Amend the removals on breakdown of relationship removal benefits to provide members with access to removals in circumstances that are the result of a relationship breakdown.
- Extend the timeframe in which housing, storage and removal benefits can be provided a member's resident family, recognised other persons or the legally entitled person upon the death of a member.
- Amend Service residence provisions to allow eligibility to occupy a Service residence to continue in circumstances where the categorisation of a member's resident family or recognised other persons changes.
- Provide a new benefit for member's who have a child 3 years old or younger accompany them on long-term overseas posting which allows them to claim a portion of out of pocket expenses they incur for their child to attend a centre-based early education facility.

#### 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 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

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

- Provide members with removal assistance as a part of their conditions of service when their relationship breaks down and they need to move to another location.
- Extend the timeframe in which benefits can be provided a member's family following the death of a member. This supports a member's family, as a part of the member's conditions of service, by affording the member's family time to grieve and make arrangements for their items to be stored or new living arrangements to be made.
- Provides continued right to occupy a Service residence when a member's family circumstances change as a part of the member's conditions of service. This supports members by giving them choice and stability in times of change and potential uncertainty.



- Provides assistance with early childhood education costs to members who are on long-term posting overseas when they have a child attending a centre-based early childhood education facility promoting a child's right to education.

The remainder of the amendments to the Principal Determination 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*.