

EXPLANATORY STATEMENT

Defence Determination 2017/31

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (the Defence Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA 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 AIA Act, as modified by section 58B of the Defence Act.

Chapter 15 of the Principal Determination sets out provisions dealing with living and working on long-term posting overseas for members of the Australian Defence Force (ADF).

This Determination has the following two purposes.

- To provide the education assistance benefit for a member who is posted overseas and directed to live in the USA and whose child attends a pre-school or kindergarten in a location where there is no suitable benchmark school.
- To provide the education assistance benefit for a member posted overseas and directed to live in the USA whose child attended a pre-school or kindergarten after 2 June 2016 and before the commencement of this Determination.

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

Section 2 is the commencement provision for the Determination and includes a table setting out the details of the commencement of sections of the Determination. Column 1 of the table sets out the provisions in numbered items, column 2 sets out the commencement and column 3 sets out date/details. Information in column 3 does not form part of the Act, so information can subsequently be inserted in the column (or edited) in a published version of the Determination. Item 1 in the table provides that the whole of this Determination commences on 21 September 2017.

Section 3 provides that this instrument has authority under section 58B of the *Defence Act 1903*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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, section 1 amends 15.6.8 to make clear that the division applies to a member who has a child who is their dependant. Section 2 amends subsection 15.6.10.1B of the Principal Determination, which provides the amount that may be reimbursed to a member for compulsory tuition fees paid for their child to attend school at the overseas posting location. The table provides the amount to be reimbursed to a member if the CDF decides there is no suitable benchmark school at a member's posting location in the USA. The section has been amended to include the reimbursement of compulsory tuition fees for a member's child who is a dependant who attends a pre-school or kindergarten. Sections 3 and 4 amend two references in Annex 15.6.A, Benchmark schools.

Schedule 2 inserts a transitional provision. The provision provides that a member on long-term posting in the USA may be reimbursed compulsory tuition fees paid for their child who is a dependant who attend a pre-school or kindergarten between 2 June 2016 and the commencement of this Determination.

Consultation

Defence Personnel Support at the Australian Embassy in Washington DC and International Policy Division have been consulted and support the proposed changes.

Authority: Section 58B of the
Defence Act 1903

Statement of Compatibility with Human Rights

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

Defence Determination 2017/31, Overseas education assistance and benchmark schools – amendment

This Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

This Determination makes technical amendments to Defence Determination 2016/19, Conditions of service.

The purpose of this Determination is to provide the education assistance benefit for a member posted overseas and directed to live in the USA and whose child attends a pre-school or kindergarten in a location where there is no suitable benchmark school. The Determination also provides the education assistance benefit for a member posted overseas and directed to live in the USA whose child attended a pre-school or kindergarten after 2 June 2016 and before the commencement of this Determination.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

This Determination advances the rights under Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education.

Defence provides education assistance to members posted overseas to assist the member and their family to not suffer a disadvantage because of the requirement for the member to live and work overseas. Benchmark schools are nominated to set the 'benchmark' for the amount of education assistance to be reimbursed to members for their children's education whilst posted overseas.

The Determination provides for a member to be reimbursed compulsory tuition fees for a child who attends a pre-school or kindergarten where a suitable benchmark school is not available.

The Determination also provides for a member to be reimbursed compulsory tuition fees if the member's child was attending a pre-school or kindergarten in the USA between 2 July 2016 and the commencement of this Determination.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Jay Andrew Clarke, Acting Assistant Secretary People Policy and Employment Conditions