

# EXPLANATORY STATEMENT

## Defence Determination (Serious illness, long service leave and travel) Amendment 2018 (No. 5)

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 1 of the Principal Determination sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions for members of the Australian Defence Force (ADF).

Chapter 5 of the Principal Determination sets out provisions dealing with leave for members of the ADF.

Chapter 9 of the Principal Determination sets out provisions dealing with travel costs in Australia for members of the ADF.

This Determination has the following purposes:

- To amend a definition for 'serious illness' to reference "person's" rather than "member's".
- To add to a list of reasons a circumstance that ends a member's service for which a member may be paid a pro rata payment instead of long service leave.
- To provide the Chief of the Defence Force (CDF) with the discretion to authorise a member granted recreation leave travel to travel by private vehicle.

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

Section 2 provides that this instrument commences on 8 February 2018.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 provides amendments to the Principal Determination.

Section 1 amends table item 1 in section 1.3.72 of the Principal Determination, which provides the meaning of "serious illness" when used in the Principal Determination. With respect to approving compassionate leave, the definition provided, "serious illness" is an illness or injury that endangers the 'member's life'. However, compassionate leave is provided to the member to visit their ill relatives. Section 1 amends the definition to refer to a "person's life" and not the "member's life".

Section 2 insert paragraph 5.5.28.1.g into the Principal Determination. The section provides a pro rata payment to a member who has more than 1 but less than 10 years of accrued service, if their service ends for certain reasons beyond the member's control. A new reason is added to the list; "medically unfit for service" to clarify the current provision. Section 3 omits and substitutes section 9.6.21 of the Principal Determination, which provides that a member granted recreation leave travel may be authorised to travel by private vehicle. Section 3 provides that this decision is at the discretion of the CDF because it may not be the most economical means of travel.

If a member has been granted recreation leave travel to an approved destination, the CDF may authorise their travel in a private vehicle between the member's posting location and the approved destination. Travel costs for accommodation, meals and incidentals are not payable.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

This Determination makes simple amendments that correct an error, reduce ambiguity and enable specific positions to exercise a pre-existing power. The rulemaker was satisfied that external consultation was not required.

**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 Serious illness, long service leave and travel) Amendment 2018 (No. 5)**

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 has the following purposes:

- To amend a definition for "serious illness" to reference "person's" rather than "member's".
- To add to a list of reasons a circumstance that ends a member's service for which a member may be paid a pro rata payment instead of long service leave.
- To provide a CDF discretion to authorise a member granted recreation leave travel to travel by private vehicle.

### **Human rights implications**

*Right to the enjoyment of just and favourable conditions of work*

The protection of a person's right to just and favourable conditions of work engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

This Determination protects this right by clarifying policy and correcting errors to assist people to better understand and apply benefits. The change to the definition for 'serious illness' simply clarifies an existing provision. The addition to the list of reasons for paying a member long service leave is to remove ambiguity. The power to authorise a member granted leave travel to travel by private vehicle was available before this Determination. The decision to authorise this travel type will now be at the discretion of the CDF, which will enable the CDF to authorise specific positions to exercise the power on the CDF's behalf.

### **Conclusion**

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions