

EXPLANATORY STATEMENT

Defence Determination (Housing and Sydney apartment trial – amendment) 2018 (No. 6)

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 7 of the Principal Determination sets out provisions dealing with housing and meals for members of the Australian Defence Force (ADF).

This Determination has the following purposes.

- Amend the provisions for rejecting a suitable Service residence for a member participating in the Puckapunyal housing trial.
- Amend the provisions for when the Chief of the Defence Force (CDF) may approve the change of Service residence.
- Remove provisions relating to the Sydney apartment trial which has not been extended.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 amends paragraph 7.6.34.2.f of the Principal Determination, which provides that a member participating in the Puckapunyal housing trial may reject an offer of a Service residence if the home is unsuitable for a member's spouse or partner to undertake specific study or employment. The paragraph is being amended to include a member who has a recognised dependant with special needs to allow them to access professional support.

Section 2 amends paragraph 7.6.351.c of the Principal Determination, which provides that a change in Service residence may be approved if the residence is due for sale or major renovation. The paragraph is being amended to clarify that, for the circumstance to apply, the residence will no longer be available to the member to reside in. This change will ensure that when a Service residence is sold by the private owner but will remain subject to a long-term lease to Defence Housing Australia, the member will not be eligible for a change in Service residences.

Section 3 amends the note in subsection 7.8.5A.1 of the Principal Determination, which provides that a member already posted to the Puckapunyal Military area will need to opt into the Puckapunyal housing trial. The member can apply for an extended posting location when they become a part of the trial. The note is being amended to fix a typographical error by replacing the word 'reapply' with 'apply'.

Section 4 amends the see note in Annex 7.A of the Principal Determination, which provides the contribution rate for a Service residence or rent band choice accommodation. Section 4 amends a cross reference to the correct Division within Chapter 7 Part 6.

Schedule 2 amends the Principal Determination

Schedule 2 removes provisions from the Principal Determination that relate to the Sydney apartment trial. The trial commenced in July 2012 and was for a period of two years. The trial was to provide members who were posted to Sydney with the choice of selecting an apartment that was within a reasonable commuting distance to the member's work location. The trial was not extended and the apartments that were provided under the trial have been transferred to rent band choice or member choice accommodation. No members will be affected by the removal of these provisions.

- Sections 1 to 3 amend sections 7.0.2, 7.6.1 and 7.6.2 of the Principal Determination to remove references to the Sydney housing trial.
- Section 4 amends section 7.6.3 of the Principal Determination. The definition of **Market rent** is being amended to remove the provision that rent for an apartment in the trial is assessed by Defence Housing Australia.
- Section 5 amends section 7.6.4 of the Principal Determination, which provides that a smaller home may be considered to be a suitable Service residence. An exception, which provides that subsection 3 does not apply when an apartment meets the requirements for the Sydney apartment trial, is being removed.
- Section 6 amends section 7.6.12 of the Principal Determination, which provides the minimum housing standard for a Service residence. An exception, which provides that the section does not apply when a member chooses an apartment as a part of the Sydney housing trial, is being removed.
- Section 7 omits section 7.6.22 from the Principal Determination. This section provided that if a member is taken to be a part of the Sydney housing trial, the member is taken not to be living in a rent band choice home.
- Section 8 omits Chapter 7 Part 6 Division 10 from the Principal Determination. This Division set out the provisions relating to the Sydney apartment trial.
- Sections 9 and 10 amends section 7.8.4 of the Principal Determination, which provides the members who cannot apply for an increased rent ceiling. Paragraphs d and e are being omitted as they only apply to members who were taking part in the Sydney housing trial.
- Section 11 omits Annex 7.C from the Principal Determination. This Annex provided a list of inner-Sydney suburbs that were Sydney apartment trial suburbs.

Consultation

Navy, Army, Air Force and Defence Housing Australia were consulted in the development of this Determination. The rulemaker was satisfied that further 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

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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 amendments to Defence Determination 2016/19, *Conditions of service*.

This Determination has the following purposes.

- Amend the provisions for rejecting a suitable Service residence for a member participating in the Puckapunyal housing trial.
- Amend the provisions for when the Chief of the Defence Force (CDF) may approve the change of Service residence.
- Remove provisions relating to the Sydney apartment trial which has not been extended.

Human rights implications

Right to an adequate standard of living

The person's right to an adequate standard of living engages article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 ensures the realisation of this right, recognising to this effect the essential importance of an adequate standard of living. This pertains to all aspects relating to housing, including the ability to purchase a meal.

Legitimate objective: ADF members are required to live in various posting locations throughout Australia which may require them to live in a variety of housing types, such as on a military base, in a Service Residence or in rental accommodation. This could limit the standard of accommodation available to members. It could also cause a member to be separated from their family.

Reasonable, necessary and proportionate: Defence provides assistance with subsidised accommodation for a member and their family. The Sydney apartment trial was to provide members who were posted to Sydney with the choice of selecting an apartment that was within a reasonable commuting distance to the member's work location. The trial was not extended and the apartments that were provided under the trial have been transferred to rent band choice or member choice accommodation. No members will be affected by the removal of these provisions.

This Determination also protects this right by clarifying policy and correcting errors to assist people to better understand and apply benefits.

Conclusion

This Determination is compatible with human rights because it does not engage any applicable human rights or freedoms.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions