

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 8)

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* (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.

This Determination amends the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 5 sets out provisions dealing with leave.
- Chapter 7 sets out provisions relating to housing, including related housing benefits for members who live away from their families.
- Chapter 14A sets out provisions dealing with evacuation from an overseas location in response to COVID-19.

The purpose of this Determination is to enable the ADF to respond to the Coronavirus (COVID-19) pandemic. It does the following:

- amends provisions relating to the availability of short absence from duty that relate to COVID-19 and the provision of food allowance. The amendments bring the provisions in line with general community standards, while also noting the uniqueness of military service.
- amends benefits provided to ADF members and their families being evacuated from overseas posting locations and places of duty in response to changes made by the Department of Foreign Affairs and Trade.
- makes minor technical amendments.

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

Section 2 provides that this instrument commences on the day after registration.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 amends section 4.9.20 of the Principal Determination which sets the rate of Reserve service payment for periods of isolation associated with military service. The amendment means that Reserve allowance is included when determining the rate of Reserve service allowance that would be payable to the member.

Section 2 amends the heading of Chapter 5 Part 11 Division 4 of the Principal Determination to better reflect the content of the Division as a consequence of this Determination.

Section 3 amends section 5.11.16 of the Principal Determination which states the purpose of Chapter 5 Part 11 Division 4. The amendment has broadened the scope of the purpose to better reflect the content of the Division as a consequence of this Determination.

Section 4 inserts a new section after section 5.11.16 of the Principal Determination. The new section defines 'COVID-19 control measure', which is used throughout the Division as a consequence of this amendment.

Section 5 amends the heading of section 5.11.18 of the Principal Determination. The amendment is made to better reflect the content of the Division as a consequence of this Determination.

Sections 6 and 7 amend section 5.11.18 of the Principal Determination which sets out when short absence from duty is available because of COVID-19 related school closures. The amendment broadens the availability of the short absence to include circumstances where a child cannot attend school or child care provider because of a COVID-19 control measure, but the school remains open. This is in response to the changing circumstances relating to schools during the coronavirus pandemic.

Section 8 also amends section 5.11.18 of the Principal Determination to expand the authority of a member's supervisor to approve up to 28 days short absence from duty at a time rather than a cumulative total of 28 days.

Section 9 amends section 7.9.11 of the Principal Determination which sets out when a member is not eligible to receive food allowance. A new paragraph has been inserted to cover circumstances where a member has returned to their family and does not return to their posting location before the end of the 14<sup>th</sup> day. A transitional provision is provided in Schedule 3 of this Determination which means a member will continue to receive food allowance for 14 days after the commencement of this Determination.

#### Schedule 2—Overseas conditions amendments

Section 1 amends the definition of 'required to isolate' in section 14A.1.2 of the Principal Determination. The amendment is made in response to the changes made by State and Territory governments to implement a mandatory isolation period on return to Australia. The requirement may be imposed under a law of a State or Territory, including through a public health order, or directive, however described.

Section 2 amends section 14A.1.4 of the Principal Determination which provides for evacuation flights for members and their dependants to Australia. The amendment is made for operational purposes and enables people to return to locations in Australia other than a capital city. A new subsection 1A is also inserted which enables the changes to subsection 1 to apply to members who were evacuated on or after 27 March 2020. This amendment is retrospective in effect but is not detrimental to a person other than the Commonwealth; it reflects an expansion of the previous benefits provided.

Section 3 amends the heading of section 14A.1.7 of the Principal Determination to better reflect its content as a consequence of amendments made by sections 4, 5, and 6 of this Schedule.

Sections 4, 5 and 6 amend section 14A.1.7 of the Principal Determination which provides accommodation to members and their dependants who are required to self-isolate on return to Australia.

- Section 4 expands the section to include accommodation for up to 28 days after the person arrives in Australia, negating the need for section 14A.1.8 of the Principal Determination, and removes the link to a self-isolation period.
- Section 5 sets the standard of accommodation, while also excluding a period of isolation for which accommodation is provided by a State or Territory government.
- Section 6 ensures that a person who was eligible for meal supplement allowance until a specified day before to the commencement of this Determination will continue to be eligible for that allowance as previously stated.

Section 7 inserts a note under subsection 14A.1.8.1 of the Principal Determination which specifies when meal supplement allowance is payable. The note states that a person is not eligible to receive the allowance while they are in accommodation provided by the State or Territory. The note is not a rule but clarifies the interrelationship between sections 14A.1.7 and 14A.1.8 of the Principal Determination.

Section 8 omits section 14A.1.8A of the Principal Determination which provides for additional accommodation for members and their dependants who have been evacuated from an overseas posting location. The amendment has been made as a consequence of section 4 of this Schedule, which incorporates the additional accommodation into that provision.

Section 9 amends the heading of section 14A.1.16 of the Principal Determination to better reflect its content as a consequence of amendments made by section 10 of this Schedule.

Section 10 amends section 14A.1.16 of the Principal Determination which enables a member's overseas living allowances to be ceased. The amendments enable the decision maker to also reduce the rate of an allowance from the accompanied rate to the unaccompanied rate and to cease an allowance that is paid at a single rate. This is consistent with the change in conditions of employment applied by the Department of Foreign Affairs and Trade.

Section 11 amends the heading of section 14A.1.17 of the Principal Determination to better reflect its content as a consequence of amendments made by section 12 of this Schedule.

Section 12 amends section 14A.1.17 of the Principal Determination which enables a member's hardship or location allowances to be ceased. The amendments enable the decision maker to also reduce the rate of an allowance from the accompanied rate to the unaccompanied rate. This is consistent with the change in conditions of employment applied by the Department of Foreign Affairs and Trade.

Section 13 inserts a new section after section 14A.1.19 of the Principal Determination. The new section makes available domestic travel provisions to members who have been evacuated from their posting location overseas but remain on a long-term posting overseas.

### Schedule 3—Transitional

Section 1 provides a transitional provision as a consequence of amendments made by section 9 of Schedule 1 of this Determination. The provision ensures a member whose food allowance would end under the new paragraph 7.9.11.1.d will continue to be paid the allowance for 14 days after the commencement of this Determination.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the *Defence Regulation 2016*. Also, a person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Before this Determination was made, consultation was undertaken with the Department of Foreign Affairs and Trade, the Services, and the Directorate of Attaché and Overseas Management in the Strategic Policy and Intelligence Group in the Department of Defence.

The rule maker 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*

## **Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 8)**

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*.

The purpose of this Determination is to enable the ADF to respond to the Coronavirus (COVID-19). It does the following:

- amends provisions relating to the availability of short absence from duty that relate to COVID-19 and the provision of food allowance. The amendments bring the provisions in line with general community standards, while also noting the uniqueness of military service.
- amends benefits provided to ADF members and their families being evacuated from overseas posting locations and places of duty in response to change made by the Department of Foreign Affairs and Trade.

### **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 recognises the right of everyone to just and favourable conditions of work including remuneration, safe and healthy working conditions, equal opportunity for promotion, and rest, leisure and reasonable limitation of working hours.

The Determination amends domestic provisions to provide clarity and reflect the changing Whole of Government response to COVID-19. While the Determination limits existing rules (inserted by Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 No. 7 on 28 March 2020), benefits in the Principal Determination continue to be beneficial to members and promote human rights, in particular just and favourable work conditions.

The Determination also amends provisions for people who are required to evacuate to allow the benefits to be provided to people who are permitted to evacuate or are unable to return to the posting location overseas due to COVID-19.

### **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