

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 9)

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.

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

- Chapter 7 sets out provisions dealing with housing and related benefits.
- Chapter 11 sets out provisions dealing with assistance available if a member of the ADF dies or suffers personal injury or disease as a result of their service.
- Chapter 14A sets out provisions dealing with the COVID-19 pandemic.
- Chapter 15 sets out provisions in relation to members who are on long-term postings overseas.

The purpose of this Determination is to:

- extend benefits for certain deceased members and deceased former members who have had a funeral while COVID-19 restrictions have been in place to provide a memorial service after the restrictions have been relaxed.
- further adjust conditions of service for members on long term postings overseas to match those of the Department of Foreign Affairs and Trade. This amendment relates to the accrual of leave related to postings in hardship locations.

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

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

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

Section 4 provides that each instrument specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

Schedule 1—Domestic conditions amendments

Section 1 amends section 14.7.9.11 of the Principal Determination which sets out when a member is not eligible for food allowance. The amendment has the effect of ceasing the payment of food allowance after 14 days rather than 13 days, as currently provided in the Principal Determination. Schedule 3 of this Determination provides a transitional provision to provide payment for an additional day for any member whose food allowance was ceased after 13 days.

Section 2 amends section 11.4.9 of the Principal Determination which provides financial assistance towards the costs of funerals for members who have died while on a long-term posting overseas. The amendment omits paragraph 11.4.9.2.a which is also provided for in paragraph 11.4.9.2.c.

Section 3 inserts a new section after section 11.4.10 of the Principal Determination. The new section establishes financial assistance for memorial services. The section only applies to members who have had a funeral service during the COVID-19 restrictions, which have limited the number of people able to attend the funeral. The financial assistance provides up to \$14,000, but is reduced by the amount of assistance received towards the funeral under section 11.4.9 of the Principal Determination, if any. The level of assistance may be increased in limited circumstances.

Section 4 omits subsection 11.4.11.1 of the Principal Determination which provides travel and accommodation benefits to certain people attending a funeral for which financial assistance is provided under section 11.4.9. The subsection is substituted to expand the benefit to include travel benefits and accommodation to attend memorial services for which financial assistance is provided under section 11.4.10A, inserted under section 1 of this Schedule.

Section 5 omits subsection 11.4.11.2 of the Principal Determination which enables the Director General Defence Community Organisation to provide an additional night's accommodation. The subsection has been redrafted to clarify that an additional night's accommodation cannot be provided to a person attending a memorial service.

Schedule 2— Overseas conditions amendments

Section 1 amends section 14.5.5 of the Principal Determination which provides members with an allowance during their settling in and settling out period. The section inserts a new subsection which has the effect of making the allowance payable to a member who is required to self-isolate on arrival in a posting location overseas, despite having kitchen facilities available.

Section 2 inserts a new section after section 14A.1.6 of the Principal Determination. The new section provides accommodation, meals and incidental payments to people who are evacuated under Chapter 14A Part 1 of the Principal Determination. To be eligible for benefits the evacuation flights to Australia must require the member to stay in a location, other than the evacuation location or Australia, overnight. The benefits are the same that would be available under Chapter 13 Part 3 of the Principal Determination.

Section 3 inserts a new section after section 14A.1.17 of the Principal Determination. The new section applies to members who have been evacuated to Australia and continue to accrue additional recreation leave associated with being posted to a hardship location. The new section ceases the accrual of additional recreation leave when the member ceases to receive hardship or location allowance. This section will cease to apply when the member's evacuation period ends.

Section 4 inserts a new section after section 15.9.1 of the Principal Determination. For the purpose of Chapter 15 Part 9, the new section defines 'beneficiary' and 'COVID-19 control measure'.

Section 5 amends section 15.9.3 of the Principal Determination which provides benefits in relation to members who die while on a long-term posting overseas. This section omits and substitutes subsection 2 to extend the benefit to include memorial services and to improve clarity.

Section 6 amends section 15.9.3A of the Principal Determination which provides benefits in relation to a member's dependants who die overseas while the member is on a long-term posting overseas. This section omits and substitutes section 2 to extend the benefit to include memorial services and to improve clarity.

Schedule 3—Transitional

This schedule provides a transitional provision to provide payment for an additional day for any member whose food allowance was ceased after 13 days. It provides members with the equivalent of one day's food allowance.

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, Navy, Army and Air Force and the Defence Community Organisation within 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

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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

The purpose of this Determination is to:

- extend benefits for certain deceased members and deceased former members and their dependants who have had a funeral while COVID-19 restrictions have been in place to provide a memorial service after the restrictions have been relaxed.
- further adjust conditions of service for members on long term postings overseas to match those of the Department of Foreign Affairs and Trade. This amendment relates to the accrual of leave related to postings in hardship locations.

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 guarantees just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

This Determination promotes just and favourable work conditions by extending current provisions relating to funerals to include memorial services the conduct of a funeral has been limited as a result of the COVID-19 pandemic.

The Determination amends Defence Determination 2016/19, Conditions of service, by stopping the accrual of certain types of leave that are available to members who are posted to hardship locations overseas. The amendment only applies to members who have been evacuated from the hardship location to Australia during the COVID-19 pandemic. The amendment is reasonable and proportionate because the members are not experiencing the hardship conditions for which the leave credits are provided during the evacuation period. The accrual of leave credit will recommence when the member returns to the hardship location. The overall benefits in the Principal Determination continue to be beneficial to members and advance human rights, in particular just and favourable work conditions.

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