

EXPLANATORY STATEMENT

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

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* (Legislation Act). 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 6 sets out provisions dealing with relocations on posting in Australia.
- Chapter 7 sets out provisions dealing with housing and meals.
- Chapter 9 sets out provisions dealing with travel costs in Australia.

The purpose of this Determination is to make provisions relating to the posting of members during the COVID-19 pandemic. Specifically, the amendments make rules applying to members and their dependants travelling from their old posting location to their new posting location and the removal of their furniture and effects, vehicles and animals. Given COVID-19 restrictions imposed by States and Territories, a member may be directed to fly to their new posting location rather than drive. This has an impact on what a member can take with them if they were to travel by car. These amendments are based on the principle that the member will be able to move the same items that they would have been able to take with them had they driven to their new posting location.

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

Section 2 provides that this instrument commences on 1 October 2020.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 inserts after Chapter 6 Part 1 Division 3 of the Principal Determination a new division, Division 4, that provides for the removal of animals other than household pets when a member is posted to a new posting location and is directed to fly. Specifically, the amendment provides the following:

- Inserts section 6.1.24 which specifies the purpose of the Division.
- Inserts section 6.1.25 which identifies the members to whom the benefits may apply. This Division is specific to members who are eligible for a removal under the Chapter 6 Part 5 of the Principal Determination that would occur during the COVID-19 pandemic and who are directed to fly to their next posting location. A direction to fly is an exercise of command power under section 9 of the Defence Act.
- Inserts section 6.1.26 which provides a member with the reimbursement for the cost of transporting animals the member would have moved themselves, or have had moved, had they not been directed to fly from their old posting location to their next posting location. This is subject to limitations set out in section 6.1.27.
- Inserts section 6.1.27 which specifies the limitations on when reimbursement for the costs of transporting the animals may be provided. Limits are imposed on the types of animals, the costs that the member can be reimbursed for and who can transport the animals. Consistent with the purpose of the Division, the member will only be reimbursed for animals they would have taken

with them had they not been directed to fly. This may include domestic chickens, but would not extend to a herd of cattle. The transportation costs include the boarding or agistment of the animals for overnight stops and for between the day the animals arrive in the new posting location and the day the member is able to take possession of them. This may be after they leave temporary accommodation, or if the member has prearranged a place where the animal can stay, such as an agistment for a horse, whichever occurs earlier.

Schedule 2—Removal of furniture and effects amendments

Section 1 inserts after section 6.5.10 of the Principal Determination a new section 6.5.10A. The new section provides a reimbursement for the costs of transport or storage of items that would not be removed under section 6.5.10. In order to receive the benefit, the member would have had to have moved the item themselves had they not been directed to fly. The benefit is paid by reimbursement only, and the member is responsible for organising the move and storage. If the member chooses to store their items, the benefit continues for up to 1 year.

Section 2 inserts after section 6.5.11 of the Principal Determination a new section 6.5.11A. The new section provides a reimbursement for the cost of transportation of potted plants that would not be removed under section 6.5.11. In order to receive the benefit, the member would have had to have move the plants themselves had they not been directed to fly. The benefit is paid by reimbursement only, and the member is responsible for organising the move. The member is also eligible for a reimbursement for the costs of storing the plants if they, or their agent, are not available to collect the plants.

Schedule 3—Vehicle removals amendments

Section 1 inserts after section 6.5.40 of the Principal Determination a new section 6.5.40A. The new section enables a member to have vehicles that they would have moved themselves, or have had moved, to their next posting location freighted to their next posting location. For this benefit to apply, the member must have been directed to fly to their next posting location and the removal of the vehicles occurs during the COVID-19 pandemic. This rule displaces the requirements section 6.5.40 and is not subject to the constraints in that section, enabling all the vehicles that a member would have taken to their next posting location moved.

Section 2 inserts after section 6.5.41 of the Principal Determination a new section 6.5.41A. The new section enables a member to have towable items that they would have moved themselves, or have had moved, to their next posting location freighted to their next posting location. For this benefit to apply, the member must have been directed to fly to their next posting location and the removal of the towable items occurs during the COVID-19 pandemic. This rule is in addition to the rule in section 6.5.41 enabling all the towable items that a member would have taken to their next posting location moved.

Section 3 inserts after section 6.5.44 of the Principal Determination two new sections 6.5.44A and 6.5.44B. Section 6.5.44A provides for the hire of a vehicle that is reasonable for the member and their family if their own vehicles are not able to be delivered by the time they arrive in the member's next posting location or after they have completed an isolation period (also known as quarantine). Section 6.5.44B provides for the storage of the member's vehicles if the vehicles arrive at the member's next posting location and the member is unable to collect them because they have not completed an isolation, or quarantine period.

Schedule 4—Temporary accommodation amendments

Section 1 amends section 7.5.11 of the Principal Determination which specifies the conditions that would apply to a member occupying temporary accommodation under Chapter 7 Part 5 of the Principal Determination. The amendment extends the exception to the payment of a contribution to members and their dependants who are required to isolate in a place specified by State or Territory authorities that is not their usual place of residence.

Section 2 amends section 7.5.13 of the Principal Determination which provides that temporary accommodation is to be a serviced apartment unless none is available. As a consequence of State and Territory authorities specifying where a member and their dependants are to undertake a period of isolation, or quarantine, this requirement may not be able to be satisfied. As such, the amendment excludes the requirement for places where a member and their dependants are required to isolate.

Section 3 inserts after section 7.5.13 of the Principal Determination a new section 7.5.13A. The new section provides temporary accommodation at the place where the member and their dependants are

required to isolate that is not their usual place of residence. This has the effect of providing the member their place of isolation free of charge. The costs associated with a requirement that would normally be levied on the member will be borne by the Commonwealth as the requirement to isolate has arisen only as a consequence of military service.

Section 4 amends the table in section 7.5.17 of the Principal Determination which specifies the duration that a member is eligible for temporary accommodation. The amendment inserts a new item into the table that applies to a member who is required to isolate. The member's eligibility ends on the last day they are required to isolate. This limitation does not apply if the member has a continued need for temporary accommodation, in which case one of the other table items would apply.

Sections 5 and 6 amend section 7.5.24 of the Principal Determination which provides members with meals if they occupy a temporary accommodation that is a hotel or serviced apartment. The amendments insert subsections 1A and 6 and cease a member's eligibility for meal allowance while they are in temporary accommodation for the purposes of isolation and are provided meals for themselves and their dependants. This ensures that members and their dependants are not receiving both a meal and a meal allowance for the same meal period.

Schedule 5—Travel amendments

Section 1 amends section 9.1.6 of the Principal Determination which provides a member with the costs for travelling by their own means. The amendment ceases this benefit if the member is directed to travel on a specific route and does not do so. However, if the member deviates from the specified route the member may remain eligible for the benefit if a decision maker is satisfied that there are exceptional circumstances for the deviation, such as a medical emergency, or the closure of a road.

Section 2 omits and substitutes section 9.2.17 of the Principal Determination which provides a member with the costs for travelling at their own expense. The new section 9.2.17 provides the same benefit, however makes provision to cease it if the member is directed to travel on a specific route and does not do so. If the member deviates from the specified route the member may remain eligible for the benefit if a decision maker is satisfied that there are exceptional circumstances for the deviation, such as a medical emergency, or the closure of a road.

Section 3 omits and substitutes section 9.2.19 of the Principal Determination which provides for circumstances in which the member's journey is delayed from commencing or interrupted part way through due to road closures. The rule has been remade to cater for the closure of State or Territory borders, principally in response to the COVID-19 pandemic. If the members journey is delayed or interrupted, the member is eligible for the reasonable cost of accommodation and meal allowance for themselves and their dependants travelling with them, which may be paid by reimbursement.

Section 3 also inserts after section 9.2.19 of the Principal Determination a new section 9.2.19A. The new section deals with circumstances in which the member's specified route is changed. The change may include directing the member to fly the remainder of the journey. A new section enables the members allowances to be adjusted and for the member and their dependants to receive accommodation and meals until they are able to fly. It also provides them with the removal of the property that they had with them, including the freight of their vehicles and any towable items.

Decisions that are made under the Principal Determination, as amended by this Determination, 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

Consultation was undertaken with the Directorate of Relocations and Housing and the Posting Cycle Movement Co-ordination Cell in the Department of Defence, and Navy, Army and Air Force.

The rule maker is 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 postings) Determination 2020 (No. 19)

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 make provisions relating to the posting of members during the COVID-19 pandemic. Specifically, the amendments make rules applying to members and their dependants travelling from their old posting location to their new posting location and the removal of their furniture and effects, vehicles and animals. Given COVID-19 restrictions imposed by States and Territories, a member may be directed to fly to their new posting location rather than drive. This has an impact on what a member can take with them if they were to travel by car. These amendments are based on the principle that the member will be able to move the same items that they would have been able to take with them had they driven to their new posting location.

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 advances human rights by adjusting conditions of service for members who are being posted during the COVID-19 pandemic. The Determination ensures, to the extent possible, that members can fly to their next posting location and move the property that they would have moved if they had driven to their next posting location but have been directed to fly. The Determination also ensures that any quarantine period that the member is required to serve as a consequence of being posted to another location and for which they would ordinarily be charged for is provided at no cost to the member.

Conclusion

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

Jennifer Louise Statton, Acting Assistant Secretary People Policy and Employment Conditions