

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 21)

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 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 5 sets out provisions dealing with leave.
- Chapter 9 sets out provisions dealing with travel costs in Australia.
- Chapter 12 sets out provisions dealing with overseas conditions of service.
- Chapter 14 sets out provisions dealing with relocating to or from long-term posting overseas.
- Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

The purpose of this Determination is to amend the Principal Determination to expand certain benefits that have been provided in response to the COVID-19 pandemic and to provide additional benefits to meet the ongoing needs to the ADF workforce during this period. Changes includes the following:

- To update COVID-19 related definitions and references to them.
- To enable members to travel to attend memorial services of a deceased person if they were not able to attend the funeral or memorial service because of COVID-19 restrictions in place at the time.
- To provide temporary accommodation if a member or a dependant's travel to an overseas posting is delayed because of COVID-19.
- To provide a benefit towards the costs of tuition for a member's child who is attending a Government school in the USA that has been affected by COVID-19 and no longer provided any or adequate learning opportunities for the child.
- To provide temporary accommodation if a member is forced to stay overnight in a location because of an unavoidable stopover during travel taken as a part of their reunion travel benefit; for example, as a consequence of unexpected cancellations, delays or rescheduling of connecting flights.

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

Section 2 provides that sections 1 to 4 of this instrument commences on the day after the instrument is registered. Schedule 1 and Schedules 3 to 6 commence on 15 October 2020. Schedule 2 commences on 4 December 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—Definitions amendments

Section 1 omits and substitutes the note at section 1.3.29B of the Principal Determination which defines the term “isolation period”. The new note provides that an “isolation period” may also be known as a “quarantine period”. This note is provided to avoid confusion as both phrases are commonly used interchangeably. “Isolation period” is however the term used in the Principal Determination.

Section 2 omits and substitutes section 1.3.66A of the Principal Determination which defines the term “required to isolate”. The definition is remade to incorporate the definition used for conditions of service overseas. As a consequence of this amendment, the definitions in chapters 12 and 14 are omitted by this Schedule.

Section 3 omits section 5.11.12 of the Principal Determination which incorporated the definition of “isolation period” that applied to members on long-term postings overseas into Chapter 5 Part 11 Division 3. As a consequence of the amendment made by section 1 of this Schedule, this section is redundant.

Section 4 omits section 9.3.51 of the Principal Determination which defines “seriously ill” and “very seriously ill”. The terms are already defined in Chapter 1 of the Principal Determination. This amendment promotes the consistent use of defined terms across the Principal Determination.

Section 5 omits section 12.3.7A of the Principal Determination which defines “isolation period”. The term is defined in Chapter 1 of the Principal Determination. This ensures the definition is consistent across the Principal Determination.

Section 6 omits section 12.3.16A from the Principal Determination which defines “required to isolate”. The term is defined in Chapter 1 of the Principal Determination as a consequence of the amendment in section 2 of this Schedule.

Section 7 amends section 14A.1.2 of the Principal Determination by omitting the definition of “required to isolate”. The term is defined in Chapter 1 of the Principal Determination as a consequence of the amendment in section 2 of this Schedule.

Schedule 2—Compassionate leave and travel amendments

Section 1 inserts after section 9.3.52 of the Principal Determination a new section. Section 9.3.52A expands access to compassionate travel in the case where a member would have been able to use it to attend a deceased person’s funeral or memorial service, but was unable to do so because of COVID-19. The member will be able use compassionate travel to attend a memorial service once COVID-19 restrictions ease. The benefit is only available for 12 months from the date COVID-19 first prevented the member from travelling.

Schedule 3—Overseas postings – Delay in departure amendments

Section 1 inserts a new Division 4 into Chapter 14 Part 2 of the Principal Determination. The new Division provides benefit for members and their dependants who experience a delay in their departure from Australia as a consequence of COVID-19. Specifically, the amendment does the following:

- Inserts section 14.2.12 into the Principal Determination. The section provides definitions that apply to the Division.
- Inserts section 14.2.13 into the Principal Determination. The section identifies who the Division applies to, namely members who are commencing a long-term overseas posting and their dependants, regardless of whether the dependants travel with the member.
- Inserts section 14.2.14 into the Principal Determination. The section provides temporary accommodation to those affected by delays in their departure from Australia as a consequence of COVID-19 related travel restrictions, such as an inability to get an entry permit, or an inability to travel on a scheduled flight because of the COVID-19 pandemic, which may include a person contracting COVID-19 or flights being cancelled or rescheduled.
- Inserts section 14.2.15 into the Principal Determination. The section specifies the duration that a person is eligible for temporary accommodation. Eligibility commences on the day the delay

commences and continues until they are able to depart Australia. Approval for the accommodation may only be approved for two weeks at a time.

Schedule 4—Overseas education assistance amendments

Section 1 amends section 14A.1.21 of the Principal Determination which provides education assistance for a member's dependant if they are unable to attend school because of COVID-19. This section inserts a new subsection 14A.1.21.1A which makes a member who has a child in a Government school in the USA ineligible for the education assistance under this section. Instead, the member will be eligible to receive a reimbursement for the costs of tuition under section 14A.1.21A, inserted as a consequence of section 2 of his Schedule.

Section 2 inserts after section 14A.1.21 of the Principal Determination a new section. Section 14A.1.21A provides a reimbursement to a member who has a child attending a Government school in the USA that is closed or the decision maker is satisfied that the school is providing inadequate learning opportunities for the child. The assistance is reimbursement of up to 10 hours of tuition per week per child capped at USD 75 per hour.

Section 3 amends section 15.6.15.1A of the Principal Determination to correct a reference to section 15.6.18, USA – summer camps.

Schedule 5—Overseas reunion travel amendments

Section 1 amends the heading of section 15.3.14 of the Principal Determination to add the word “travel” so that the section heading is called “Amount of reimbursements – travel”. This amendment distinguishes the heading from other benefits provided in a new section inserted as a consequence of section 2 of this Schedule.

Section 2 inserts after section 15.3.14 of the Principal Determination a new section. Section 15.3.14A provides a reimbursement to a member undertaking reunion travel if they have an unavoidable stopover. The member is eligible to be reimbursed for the cost of accommodation, meals, and incidentals for one night only. The member may be reimbursed for multiple one-night stopovers at different locations during the course of their reunion travel.

Schedule 6—Miscellaneous amendments

Sections 1 and 2 make minor changes to subsection 12.5.3.1 and 14A.1.11A.1 of the Principal Determination to fix grammatical errors.

Schedule 7—Transitional provisions

Section 1 defines “Principal Determination” for the purpose of this Schedule.

Section 2 applies to a person who incurred an expense between 13 July 2020 and the commencement of Schedule 3 as a consequence of their departure to an overseas posting location being delayed. The section provides the member with the costs of their accommodation if they would have been eligible under Chapter 14 Part 3 Division 4 of the Principal Determination had it been in force at the time.

Section 3 applies to a member who incurred a cost for tuition between 1 August 2020 and the commencement of Schedule 4 for their children as a consequence of interruptions to schooling in government schools in the USA as a consequence of COVID-19. If the member would have been eligible under Chapter 14 Part 3 Division 4 of the Principal Determination, as amended by this Determination, the member is eligible to receive the same amount (up to USD 75) that they would have received under that section had it been in force at the time.

Section 4 applies to a member who received reunion travel between 1 September 2020 and the commencement of Schedule 5 and experienced an unavoidable stopover. If the member would have been eligible for benefits provided under section 15.3.14A of the Principal Determination, as amended by this Determination, the member is eligible to receive the same benefits that they would receive under that section.

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

The Navy, Army and Air Force as well as Directorate of Attaché and Overseas Management were consulted on the making of this Determination.

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 amend the Principal Determination to expand certain benefits that have been provided in response to the COVID-19 pandemic and to provide additional benefits to meet the ongoing needs to the ADF workforce during this period. Changes includes the following:

- To update COVID-19 related definitions and references to them.
- To enable members to travel to attend memorial services of a deceased person if they were not able to attend the funeral or memorial service because of COVID-19 restrictions in place at the time.
- To provide temporary accommodation if a member or a dependant's travel to an overseas posting is delayed because of COVID-19.
- To provide a benefit towards the costs of tuition for a member's child who is attending a Government school in the USA that has been affected by COVID-19 and no longer provided any or adequate learning opportunities for the child.
- To provide temporary accommodation if a member is forced to stay overnight in a location because of an unavoidable stopover during travel taken as a part of their reunion travel benefit; for example, as a consequence of unexpected cancellations, delays or rescheduling of connecting flights.

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 promotes just and favourable work conditions by making provision that ensure the member does not incur additional expenses as a result of activities relating to their duty that have been affected by the COVID-19 pandemic. The Determination provides benefits to cover the costs for isolation and provides meals benefits for those periods, as well as accommodation during periods the member and their dependants are required to have an unplanned and unavoidable stopover in a location. The Determination also provides a member with the ability to attend a memorial service if COVID-19 prevented the member from attending their funeral or an earlier memorial service.

Right of the child to education

The protection of child's right to education engages Article 28 of the Convention of the Rights of the Child.

This Determination recognises the right of the child to education by providing additional financial assistance for children if Government Schools in the USA offer inadequate learning because of COVID-19.

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