

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 24)

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 5 which makes provisions for different types of leave and absences from duty.
- Chapter 9 which sets out provisions dealing with travel costs in Australia.

The purpose of this Determination is to do the following:

- Amend short absences related to the requirement to isolate or quarantine in response to an infectious disease. The Determination limits the availability of the absence to circumstances that have a connection with military service or specified leave travel benefits. If a member is required to isolate or quarantine as a consequence of their private activities or travel, the member will need to use their own leave credits to cover the isolation or quarantine period if they are unable to otherwise attend for duty.
- Provide additional benefits to members who access reunion leave travel, compassionate travel and remote location leave travel in response to the COVID-19 pandemic. Specifically, the Determination provides members with the costs of their accommodation and additional costs if they are required to quarantine or isolate due to COVID-19 restrictions. These additional benefits also apply to the member's partners when compassionate travel is being used.
- Make provisions for members who are eligible for recreation leave travel, pre-deployment leave travel and post-deployment leave travel to travel to a capital city in Australia if they are unable to travel to visit family as a consequence of COVID-19 restrictions.

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

Section 2 provides that this instrument commences on 12 November 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—Short absence amendments

Section 1 amends section 5.11.11 of the Principal Determination which specifies the purpose of Chapter 5 Part 11 Division 3 Division 3: Short absence – Infectious diseases. The amendment omits the reference to the Department of Health as a consequence of State and Territory authorities having responsibility for the management and control of infectious diseases.

Section 2 inserts a new section after section 5.11.13 of the Principal Determination. The new section, section 5.11.13A, identifies classes of members who are not able to access short absence under this Division. It excludes member who are required to isolate or quarantine as a consequence of their private activities and travel unless it occurred in connection with leave associated with reunion travel or compassionate travel, both of which are provided under the Principal Determination. The definition of 'required to isolate' at section 1.3.66A of the Principal Determination includes being required to quarantine.

Schedule 2—Reunion travel amendments

Section 1 inserts a new section after section 9.3.33 of the Principal Determination. The new section, section 9.3.33AA, provides members reunion travel credits to reunite with their families with additional benefits to cover the costs associated with the requirement to isolate. The definition of 'required to isolate' at section 1.3.66A of the Principal Determination includes being required to quarantine. The additional benefits can only be used twice in a 12-month period and, unless there are exceptional circumstances, can only be used 6 months after the last time a reunion travel credit was used (regardless of whether they receive an additional benefit in conjunction with the travel credit). If the member is directed by a government official to isolate in a specified place, such as a hotel, the cost of the accommodation is covered. This also includes meals that are provided as a part of quarantining in the specified place that are not separately charged. If the member is not directed to occupy a specific place and they organise their own place to complete the isolation period, the member is eligible for the same amount of travel allowance that they would receive if they were on duty travel. This covers accommodation, meals and incidental expenses, but does not apply if the member can complete the isolation period at their usual place of residence of their dependant's usual place of residence.

Section 2 amends section 9.3.33A which specifies the conditions that apply when a member uses a reunion travel credit. The amendment inserts a new subsection, subsection 9.3.33A.1A, which prevents a member from using the reunion travel credit for a dependant to knowingly travel from or to a place that is going to result in them being required to isolate.

Schedule 3—Compassionate travel amendments

Section 1 inserts a new section after section 9.3.60 of the Principal Determination. The new section provides members and their partners who have been provided compassionate travel with additional benefits to cover the costs associated with the requirement to isolate. The definition of 'required to isolate' at section 1.3.66A of the Principal Determination includes being required to quarantine. If a person is directed by a government official to isolate in a specified place, such as a hotel, the cost of the accommodation is covered. This also includes meals that are provided as a part of quarantining in the specified place that are not separately charged. If the member is not directed to occupy a specific place and they organise their own place to complete the isolation period, the member is eligible for the same amount of travel allowance that they would receive if they were on duty travel for each person. This covers accommodation, meals and incidental expenses.

Schedule 4—Leave travel amendments

Section 1 inserts a new section after section 9.4.1 of the Principal Determination. The new section provides a definition for 'place of duty' for a member, which includes either their posting location, or if they are not posted to their place of duty, the area that would be their posting location if they were posted to that location.

Section 2 amends section 9.4.4 of the Principal Determination which defines nominated family. The amendment omits subsection 3 which specifies the location a member can travel to if they have no nominated family. This has been omitted and reinserted in various places through Chapter 9 Part 4 that deal with the location to which a person can travel.

Section 3 remakes section 9.4.5 of the Principal Determination which provides the purpose of recreation leave travel. The purpose is amended to include travel to another location, recognising that not all members will have a nominated family to visit. The member will therefore be able to travel to a capital city.

Section 4 inserts a new section after section 9.4.5 of the Principal Determination. The new section identifies classes of members who may be able to access recreation leave travel benefits under Chapter 9 Part 4 Division 1 of the Principal Determination.

Section 5 remakes section 9.4.6 of the Principal Determination which provides the CDF the authority to provide recreation leave travel. The section is remade providing the eligibility criteria for recreation leave travel for members with, and without, nominated family. It also prevents recreation leave travel from being approved if it is known that the member will travel to a place that will require them to isolate on their return to the place of duty.

Section 6 amends section 9.4.7 of the Principal Determination which specifies the destinations that a member can travel to using recreation leave travel. The amendment remakes subsection 1 to include a

capital city in Australia if the member has no nominated family. This is made as a consequence of the amendment made by section 2 of this Schedule.

Section 7 amends section 9.4.13 of the Principal Determination which enables the transfer of a recreation leave benefit to the member's nominated family, enabling the nominated family to visit the member at their place of duty. The amendment inserts subsection 3 which prohibits the transfer of a recreation leave travel benefit if the nominated family would have to isolate when they arrived at the member's place of duty.

Sections 8 and 9 amend section 9.4.17 and section 9.4.21 of the Principal Determination in a similar manner. Section 9.4.17 provides the eligibility criteria for pre-deployment leave and section 9.4.21 provides the eligibility criteria for post-deployment leave. The amendments remake subsection 1 of both sections and insert a subsection 1A. The amendment to subsection 1 specifies when a member is eligible for the type of leave travel. Subsection 1A specifies the location to which the travel benefit can be taken, which includes a capital city in Australia if the member has no nominated family. This is made as a consequence of the amendment made by section 2 of this Schedule.

Schedule 5—Remote leave location travel amendments

Sections 1 and 2 amend section 9.4.31 of the Principal Determination which specifies the travel benefit under Scheme B of remote location leave travel. The section 1 remakes paragraph 9.4.2A.b to remove the prohibition on travel to Darwin. Section 2 inserts subsection 2B which places a limit on travel to Darwin making it available only during the COVID-19 pandemic.

Section 3 amends section 9.4.32 of the Principal Determination which enables a remote location leave travel benefit to be offset and thereby permitting the member and their dependants to travel to another location. The amendment inserts a legislative note after subsection 2 to clarify the person using the remote location leave travel benefit must leave the location where they live. This is consistent with the purpose of the benefit.

Section 4 amends subsection 9.4.32.5 of the Principal Determination which specifies the conditions for a package tour. The amendment remakes paragraph c removing the requirement for the packaged tour to include commercially provided travel to the travel destination during the COVID-19 pandemic. This enables a member or their dependant to drive to the destination and take advantage of locally organised packaged tours.

Schedule 6—Transitional

Section 1 defines 'Defence Determination' as the Principal Determination, as in force from time to time, and 'required to isolate', incorporating the meaning as provided in the Principal Determination as in force at the commencement of this Determination.

Section 2 provides a benefit to specified people who were required to isolate and charged for the accommodation in which the isolation occurred between the 28 October 2020 and the commencement of this Determination. The benefit only applies to people who would have been eligible for a benefit for the cost of accommodation under this Determination had it been in force at the time. The benefit is the cost of the accommodation, and, if charged separately, the costs of meals, and incidental expenses. The benefit for meals and incidental expenses is limited to what a member would receive if they were on duty travel.

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

Before this Determination was made, consultation was made with the Navy, Army and Air Force. 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 do the following:

- Amend short absences related to the requirement to isolate or quarantine in response to an infectious disease. The Determination limits the availability of the absence to circumstances that have a connection with military service or specified leave travel benefits. If a member is required to isolate or quarantine as a consequence of their private activities or travel, the member will need to use their own leave credits to cover the isolation or quarantine period if they are unable to otherwise attend for duty.
- Provide additional benefits to members and their families who access reunion leave travel, compassionate travel and remote location leave travel in response to the COVID-19 pandemic. Specifically, the Determination provides members and their dependants with the costs of their accommodation and additional costs if they are required to quarantine or isolate due to COVID-19 restrictions.
- Make provisions for members who are eligible for recreation leave travel, pre-deployment leave travel and post-deployment leave travel to travel to a capital city in Australia if they are unable to travel to visit family as a consequence of COVID-19 restrictions.

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 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 amending existing conditions of work and providing additional conditions in response to the COVID-19 pandemic. The amendments enable members and their dependants to take advantage of existing conditions by modifying those that are in connection with military service or promote the reunion of families so that they can occur in a COVID-safe manner, or if this is not possible, the Determination limits them in order to reduce the chance of exposure to 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