

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2021 (No. 15)

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 Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as a part of the member's conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligation and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

Purpose

The purpose of this Determination is to provide benefits for members who are on a long-term posting overseas in response to, and recognition of, the additional difficulties experienced as a consequence of the COVID-19 pandemic in overseas locations. These benefits also align, where possible, the conditions of service of a member with the benefits of an employee of the Department of Foreign Affairs and Trade (DFAT).

Operational details

Details of the operation of the Determination are provided at annex A.

Human rights compatibility

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

Review options

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, the consultation was with the Department of Foreign Affairs and Trade and the Directorate of Overseas and Attaché Management, the Defence COVID-19 taskforce.

The rule maker was satisfied that further external consultation was not required.

Approved by:

Fiona Louise McSpeerin

Assistant Secretary

People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

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Operational details

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

Section 2 provides the instrument commences on 5 August 2021.

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—COVID-19 overseas conditions amendments

Section 1 inserts section 14A.2.7 into the Principal Determination. The new section provides a payment to a member for quarantine costs for themselves and their dependants who accompanied them to the posting location overseas. The benefit is available for members and the dependants accompanying them who travel at their own expense to Australia and are required to go into quarantine. The benefit is limited to people who do not have a specific travel benefit for the person travelling at the time of booking their travel to Australia and can only be paid once for each person. The member is not eligible for the benefit after 30 June 2022.

Section 2 inserts Part 3 into Chapter 14A of the Principal Determination. The part provides a one off payment in response to COVID-19 restrictions that is payable after the end of the member's posting. Specifically, the part provides a payment to specific members who are on a long-term posting overseas that will end before 30 June 2022. To be eligible for the benefit, the member's posting must not end as a consequence of a request of the member and the decision maker must be satisfied that the member was not able to travel using an assisted leave travel benefit under Chapter 16 Part 4 of the Principal Determination. This may be because of operational reasons, COVID-19 restrictions and the related reduction in flights. The amount of the benefit is dependent on where they are posted to and starts at AUD 750 for members posted to a location in the Pacific or South East Asia, increasing to a maximum benefit of AUD 2,500 for members posted to a location in Africa. This benefit reflects DFAT's assisted leave travel cash-out benefit available to its employees.

Section 3 amends section 15.5.39 of the Principal Determination, which provides travel benefits for members and their dependants to return to Australia in between sequential long-term postings overseas. Section 15.5.39 is largely remade in full, however new provisions have been added to provide an ability to increase the period in which the travel must be taken. This has been increased for members' dependants during the COVID-19 pandemic as a consequence of travel restrictions. Subsections 9 and 10 of section 15.5.39 have been omitted and remade in section 15.3.39A.

Section 4 inserts section 15.6.17B into the Principal Determination. The new section provides additional education support for members who are eligible for other types of education assistance for a dependant who is a child. The benefit provides a reimbursement for the cost of up to 10 days of education support up to a maximum of AUD 135 a day. The benefit is only available to a member until 30 June 2022.

Section 5 inserts section 16.4.11A into the Principal Determination. The new section applies to a member on a long-term posting overseas in a hardship location and provides them with a one off accommodation benefit to offset their assisted leave travel benefit to travel within the country to which they are posted. The benefit is available to a member when they rent commercially available accommodation, which includes accommodation available on internet platforms such as Airbnb. The amount of the benefit is AUD 1,200 for every 7 day period plus AUD 200 for every other day. A member with 9 days of accommodation would be eligible for AUD 1600 (\$1200 + 2 x \$200), whereas a member with 4 days of accommodation would be eligible for AUD 800 (4x \$200). The benefit is only available to a member until 31 December 2021.

Schedule 2—Transitional provisions

Section 1 provides the definition of Defence Determination that applies throughout this Schedule. It means the Defence Determination 2016/19, Conditions of service, is in force immediately after the commencement of Schedule 5 of this Determination

Section 2 provides a transitional benefit for quarantine costs relating to private travel to Australia that occurred between 1 July 2021 and the commencement of Schedule 5 of this Determination. The member is eligible for an amount that they would have received under section 14A.2.7 of the Defence Determination. If the member receives a benefit in relation to a person under this section, the member is not eligible for the benefit under section 14A.2.7 of the Defence Determination in relation to the same person.

Section 3 provides a transitional benefit for members who would have received additional benefits under section 15.3.39 of the Defence Determination for travel taken between 1 July 2021 and the commencement of Schedule 5 of this Determination. The member is eligible for excess baggage benefits under section 14.4.11 of the Defence Determination in relation to that travel.

Section 4 provides a transitional benefit for a reimbursement of education support costs for services received between 1 July 2021 and the commencement of Schedule 5 of this Determination. To be eligible for the benefit the member would need to be eligible for a type of education assistance under the Defence Determination. For each day the member receives the benefit under this section, the number of days the member can receive the benefit for under section 15.6.17B of the Defence Determination is reduced by 1.

Section 5 provides a transitional benefit for members who would have been eligible for a benefit under section 16.4.11A of the Defence Determination between 1 July 2021 and the commencement of Schedule 5 of this Determination. The benefit provides accommodation assistance at the same rates of the member would have received under the Defence Determination. If the member receives a benefit under this section, the member ceases to be eligible for the benefit under section 16.4.11A for the Defence Determination.

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Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Overview of the Determination

The purpose of this Determination is to provide benefits for members who are on a long-term posting overseas in response to, and recognition of, the additional difficulties experienced as a consequence of the COVID-19 pandemic in overseas locations. These benefits also align, where possible, the conditions of service of a member with the benefits of an employee of the Department of Foreign Affairs and Trade (DFAT).

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.

Right to an adequate standard of living

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Assessment of compatibility

The Determination is compatible with human as provides additional benefits to members who are on long-term posting overseas and their families as a part of the member's conditions of service. These schedules recognises that the COVID-19 pandemic has provided additional stresses on members and their families, particularly in relation to their ability to travel to Australia and responds accordingly.

Conclusion

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*.