

Defence (Early return of members from post) Determination 2021

EXPLANATORY STATEMENT

This Determination is 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.

Purpose

This Determination establishes benefits for members on a long-term posting overseas in Cherbourg, France who are required to return from their posting location early. The benefits provided in this Determination are in response to the unique circumstances that have resulted in Defence returning members early from the post.

The Determination also makes consequential amendments to the Defence Determination 2016/19, Conditions of service, which provides benefits more broadly for members of the Australian Defence Force (ADF) and their families as part of the member's conditions of service. Amendments to the Defence Determination are made to avoid the duplication of benefits.

Operational Details

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

Incorporation by reference

The Determination makes references to sections of the Defence Determination 2016/19, as in force from time to time.

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 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 undertaken with the Offices of the Secretary of the Department of Defence and the Chief of the Defence Force, Navy, Capability Acquisition and Sustainment Group, Strategic Policy and Industry Group within the Department of Defence.

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

Approved by:

Fiona Louise McSpeerin

Assistant Secretary
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

Defence (Early return of members from post) Determination 2021***Operational details***

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

Section 2 specifies that the Determination commences on the day of registration.

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

Section 4 provides definitions that apply in this Determination and includes the definition of member, which identifies members who are eligible for benefits under this Determination.

Section 5 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.

Section 6 provides members and their families with a temporary accommodation benefit after they have returned to Australia and completed their mandatory quarantine obligations. Members and their families are eligible for temporary accommodation for up to 14 days. The benefit may end early if the member occupies permanent accommodation.

Section 7 provides members and their families with meal allowance while they are in temporary accommodation provided under section 6 of this Determination. The amount of meal allowance is the amount the payable under section 7.5.24 of the Defence Determination 2016/19, as in force from time to time.

Section 8 provides members and their families with an additional benefit if they are not able to occupy permanent accommodation before the end of their temporary accommodation provided under section 6 of this Determination. The additional accommodation allowance starts on the last day of their temporary accommodation and continues until the member occupies permanent accommodation, or until an earlier day set by a decision maker. The amount of the benefit is expressed as a daily rate, which varies based on the size of the member's family.

Section 9 provides members with a payment as a consequence of requiring a member to return from post earlier than expected. The rate of the payments are provided in Schedule 1 of this Determination and are based on the expected duration of the members posting (less than 3 years or 3 years or more) and the number of months that would have remained had they not been required to return early from the post.

Section 10 provides for an additional early return from post payment to be made if the member has suffered a financial loss or expense as a consequence of being required to return from post earlier than expected. The loss cannot relate to a loss of salary or benefits that the member would have received had they not been required from the post. The payment is discretionary, having regard to a number of factors, including the length of time the member was at the posting, the time remaining on the posting, and if the loss or expense would have been reduced had the member not been required to return early from the posting location. The maximum amount of the payment is the amount of the loss less the early return from post payment payable to the member. This means that the member is not able to profit from the early return from post payment.

Schedule 1—Rates of early return from post payment

Section 1 provides the rates of the early return from post payment for members who had a posting of 3 years or more to the posting location. The amount is payable to eligible members under subsection 9 (2) of this Determination.

Section 2 provides the rates of the early return from post payment for members who had a less than 3 year posting to the posting location. The amount is payable to eligible members under subsection 9 (3) of this Determination.

Schedule 2—Consequential amendments

Section 1 amends section 14.6.17 of the Defence Determination 2016/19 which provides a reimbursement for losses suffered if the Commonwealth withdraws from a posting. This section inserts paragraph 14.17.2.c which prevents member receiving a benefit under section 14.6.17 of the Defence Determination 2016/19 if they receive a benefit under this Determination. Similar benefits are paid to members under section 10 of this Determination.

Section 2 amends section 15.3.17 of the Defence Determination 2016/19 which limits when a member can use a reunion travel benefit under Chapter 15 Part 3 of Defence Determination 2016/19. This section removes the limitation for members who are eligible for benefits under this Determination to provide increased flexibility for those affected by the early return from post.

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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

This Determination establishes benefits for members on a long-term posting overseas in Cherbourg, France who are required to return from their posting location early. The benefits provided in this Determination are in response to the unique circumstances that have resulted members being returned from post early.

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.

Assessment of compatibility

This Determination is compatible with human rights in that it provides favourable conditions of service package to members who are required to return early from post.

Conclusion

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.