

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2023 (No. 3)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (Defence Act) 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 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 do the following:

- Provide members and their dependants affected by ongoing restrictions and lockdowns in China with additional benefits relating to temporary accommodation and education assistance.
 - The changes made by this Determination are in line with the Department of Foreign Affairs and Trade's response to China's ongoing pandemic countermeasures.
 - Promote the use of contemporary drafting styles.
- Correct errors in the rent ceilings in Annex 7.E for Ballarat, Delecombe and Alfredton.
- Provide savings and transitional provisions concerning ongoing restrictions and lockdowns in China with additional benefits relating to temporary accommodation and education assistance.

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 following consultation was undertaken:

- Schedule 1: The Department of Foreign Affairs and Trade.
- Schedule 2: The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.

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

Approved by:

Fiona 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 following commencement dates:

- Sections 1 to 4 of the Determination and anything in the Determination not elsewhere covered by the table commences on the day after the instrument is registered.
- Schedules 1 and 3 of the Determination commences on 2 February 2023.
- Schedule 2 of the Determination commences on 2 March 2023.

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—Overseas conditions — China amendments

Item 1 repeals and substitutes subsection 12.3.14A of the Principal Determination which provides that the post index for a post index location is the standard figure provided to Defence by a data service provider for the locations set out in Annex 12.3.B of the Principal Determination. The subsection has been amended to correct a typographical error.

Item 2 repeals and substitutes Chapter 14 Part 4 of the Principal Determination which provides travel costs associated with isolation requirements to members and dependants who are in Australia are temporary absence from a posting in China and undertaking travel provided under Chapter 14, 15 or 16 of the Principal Determination. The Part has been amended to include periods a member and their dependants are not able to return to their posting in China due to ongoing restrictions and lockdowns there. This Part will cease to apply on 30 June 2023.

Item 3 inserts section 15.6.15A into the Principal Determination. The new section provides that a member who is posted to China is eligible to be reimbursed the costs for up to 10 days of educational support for their child for either an organised program or a tutoring support. This section will cease to apply on 31 August 2023.

The new section also provides that the amount the member may reimburse is the lesser of the cost of the organised program or tutoring support and the amount calculated using the provided formula. The formula uses the post index which is an indication of the relative cost of living difference between Australia and an overseas location. These figures are provided to Defence twice a year by an independent data provider.

Item 4 amends section 16.4.11A of the Principal Determination which provides that a member is eligible for a one-off accommodation assistance for each day they occupy commercially provided accommodation if they offset their assisted leave travel to travel to a location in China under subsection 16.4.11.1. The item amends subsection 4 by replacing “31 December 2022” with “30 June 2023” in response to the effect of ongoing restrictions and lockdowns in China affecting the return of members and their dependants who are in Australia either on temporary duty or on temporary absence from a posting in China.

Schedule 2—Rent ceilings amendments

Items 1 to 6 amend Annex 7.E of the Principal Determination which provides the rent ceiling for members based on their rank and location. The items amend the rent ceiling for Ballarat, Delecombe and Alfredton for members who hold the rank of Major or Lieutenant Colonel. The rates were amended by Defence Determination, Conditions of service (Living-in accommodation and review of housing contributions and allowances) Amendment Determination 2023 (No. 2) but, due to an error in the calculations, the rates determined were incorrect. The changes made by this Schedule correct this error.

Schedule 3—Transitional provisions

Clause 1 provides a definition of Defence Determination which applies to the Schedule.

Clause 2 provides that a member who, between 15 December 2022 and the commencement of Schedule 1 of this Determination, was in Australia on temporary absence from a posting in China, was undertaking travel provided by Chapters 14, 15 or 16 of the Principal Determination and was required to isolate before returning to China, or was unable to return to China due to ongoing restrictions and lockdowns is eligible for benefits provided under Chapter 14A Part 4 of the Principal Determination had the changes made by Schedule 1 of this Determination applied at the time.

Clause 3 provides that where a person has incurred costs for accommodation, meals and incidentals between 15 December 2022 and the commencement of Schedule 1 of this Determination that they would otherwise have been eligible for had the changes made by Schedule 1 of this Determination applied at the time is eligible to be reimbursed of those costs up to what they would have been eligible for.

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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

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- Provide members and their dependants affected by ongoing restrictions and lockdowns in China with additional benefits relating to temporary accommodation and education assistance.
 - The changes made by this Determination are in line with the Department of Foreign Affairs and Trade's response to China's ongoing pandemic countermeasures.
 - Promote the use of contemporary drafting styles.
- Correct errors in the rent ceilings in Annex 7.E for Ballarat, Delecombe and Alfredton.
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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

Schedules 1 and 3 are compatible with human rights as it provides members and their dependants additional benefits that are reasonable, necessary and proportionate, in response to the member being unable to return to their overseas posting due to the ongoing pandemic countermeasures in that overseas country which restricts travel and entry.

Schedule 2 is makes amendments to the Principal Determination which does not change the underlying policies or benefits. As such, it does not engage with any of the applicable rights or freedoms.

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*.