

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2023 (No. 4)

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 obligations 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:

- Amend higher duties allowance provisions to allow members who hold the rank of Sub Lieutenant that have been directed to perform duties at the rank of Lieutenant to be eligible to receive higher duties allowance.
- To extend the provision of excess baggage benefits for specified overseas travel until 1 March 2024, change the approved club for member's posted to Türkiye, and change the spelling of the country "Turkey" to "Türkiye" where it is referenced in the Principal Determination.

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: Navy, Army and Air Force.
- Schedule 2: Consultation was not considered necessary for the amendments in this Schedule. The changes are technical in nature and do not amend the provision of benefits.

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 Determination, Conditions of service Amendment Determination 2023 (No. 4)***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 the instrument is registered.
- Schedules 1 to 3 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—Higher duties allowance amendments

Item 1 omits and substitutes the table in paragraph 4.1.4.b of the Principal Determination which provides when a member is ineligible to receive higher duties allowance. The table has been amended to remove table item 5 which applies to members holding the rank of Sub Lieutenant.

Schedule 2—Overseas amendments

Sections 1, 2 and 5 to 7 amend a number of provisions within the Principal Determination to change the spelling of “Turkey” to “Türkiye” to reflect the correct spelling of the country’s name.

Section 3 amends subsection 14.4.11.2A of the Principal Determination which provides excess baggage benefits for overseas travel that meets specified criteria. Section 3 amends paragraph 14.4.11.2A to extend the period when the travel occurs until 1 March 2024.

Section 5 also amends table item 29 of subsection 15.8.2.2 of the Principal Determination which provides the approved club in the member’s location for the purpose of pursuing sporting, recreational and fitness activities. The table item is amended to change the approved club for Türkiye from “Ankara Sehir Kulubu, Ankara (known as ASK Sports Club)”, which is now closed, to “MACFit”.

Schedule 3—Transitional provisions

Clause 1 provides the definition of ‘Defence Determination’ which applies to Schedule 2 of this Determination. Defence Determination means the Defence Determination 2016/19, as in force from time to time.

Clause 2 provides that a member holding the rank of Sub Lieutenant who was eligible for higher duties allowance immediately before 2 February 2023 is eligible to continue to receive higher duties allowance. After the commencement of this Schedule, these members may also become eligible for higher duties allowance in relation to a period commencing on or after 2 February 2023. Eligibility for higher duties allowance under this provision ends on the last day the member would have been eligible to receive it, or on the commencement of this Schedule. Members may continue getting higher duties allowance under the normal provisions of the Determination if they continue to be eligible.

Clause 3.1 provides that clause 3 applies to a member who was posted to Türkiye and was eligible for the cost of club membership in Türkiye under section 15.8.4 or 15.8.5 of the Principal Determination between 14 December 2022 and the commencement of this Determination.

Clause 3.2 provides that a member is eligible for the cost of club membership under section 15.8.4 or 15.8.5 of the Principal Determination had Schedule 3 of this Determination been in force between 14 December 2022 and the commencement of this Schedule.

Clause 3.3 provides that the amount a member is eligible for under clause 3 is reduced by the amount the member received for the cost of a membership under section 15.8.4 or 15.8.5 of the Principal

Determination between 14 December 2022 and the commencement of this Determination that has not been repaid.

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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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- Amend higher duties allowance provisions to allow members who hold the rank of Sub Lieutenant that have been directed to perform duties at the rank of Lieutenant to be eligible to receive higher duties allowance.
- To extend the provision of excess baggage benefits for specified overseas travel until 1 March 2024, change the approved club for member's posted to Türkiye, and change the spelling of the country "Turkey" to "Türkiye" where it is referenced in the Principal Determination.

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

Schedule 1 of this Determination is compatible with human rights as it provides higher duties allowance for members who hold the rank of Sub Lieutenant when they have been directed to perform duties at the rank of Lieutenant to recognise that the member has been directed to perform duties attributed to a higher rank or higher position.

Schedule 2 of this Determination provides just and favourable conditions of work for members by providing a replacement approved club for members and their dependants to join when the member is posted to Türkiye, so members and their dependants in that location can continue to receive a benefit as a part of the member's conditions of service to pursue sporting, recreational and fitness activities.

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*.