

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2024 (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:

- Amend definitions relating to the categorisation of a member's family to promote alignment with the underlying policies.
- Amend the leave provisions of career transition to increase the number of absence days that a member may access during the lifetime of their ADF career.
- Provide that the *Privacy Act 1988* applies to a member's dependants' certificates of fitness and how the certificates must be filed by the Joint Health Command when members travel to a long-term posting overseas.
- Make technical amendments to the Principal Determination that update cross references and definitions, promote the use of contemporary drafting styles and improve readability. These amendments do not alter the underlying policies, or the benefits that are currently provided.

Operational details

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

Incorporation by reference

The Determination makes references to the *Acts Interpretation Act 1901*, *Income Tax Assessment Act 1936*, *Privacy Act 1988* and *Archives Act 1983*. This Instrument is incorporated into the Determination as in force from time to time. Section 1.2.5A of the Principal Determination specifies that a reference to an Act of Parliament or a legislative instrument to which section 14(3) of the AI Act applies are incorporated as in force from time to time, unless otherwise stated.

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 undertaken with the Navy, Army, Air Force, Joint Transition Authority Steering Group and the Directorate of Transition Programs & Engagement.

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

Approved by:

COL Kirk Lloyd
Acting Assistant Secretary
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

Defence Determination, Conditions of service Amendment Determination 2024 (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 commences on the day the instrument is registered.
- Schedule 1 of the Determination commences on 9 May 2024.

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—Interpretation amendments

Item 1 amends section 1.3.20 of the Principal Determination which provides the definition of ‘unaccompanied resident family’. The item replaces paragraph 1.3.20.2.b to include that the CDF must be satisfied that a child is being cared for in a home the member maintains before they can be recognised as a member’s unaccompanied resident family.

Items 2 and 3 amend section 1.3.28 of the Principal Determination which provides that a member’s resident family is unaccompanied resident family if there are service or compassionate reasons for the resident family not to accompany the member. The items make the following amendments.

- Item 2 amends the section heading to remove the reference to ‘Service reasons’.
- Item 3 replaces subsection 1.3.28.1 to remove the inclusion of ‘Service reasons’ from the section.

Item 4 amends section 1.3.30 of the Principal Determination which provides who subdivision 5 applies to. The item repeals and substitutes the section to add subsection 1.3.30. This subsection clarifies that despite being in a dual serving couple, subdivision 5 does not apply when both members are occupying living-in accommodation.

Items 5 and 6 amend section 1.3.32 of the Principal Determination which provides the classification of members in a dual serving couple when one member lives with resident family. The item amends the heading of the section to clarify that the section applies when one member lives with resident family and corrects a typographical error.

Items 7 to 9 amend section 1.3.33 of the Principal Determination which provides for the classification of members in a dual serving couple when both members live with resident family. The items make the following amendments.

- Item 7 amends the section heading to promote consistency with other section headings in Division 3.
- Item 8 corrects a typographical error.
- Item 9 inserts a clarifying note into the section to provide that nomination rules are set out in section 1.3.34.

Item 10 inserts section 1.3.33A into the Principal Determination. This new section provides for the classification of dual serving couples when one of the members occupies living-in accommodation.

Item 11 amends section 1.3.36 of the Principal Determination which provides the definition of ‘partner’. The item amends subsection 1.3.36.2 to clarify that a partner approved as a ‘CDF recognised partner’ is exempt from the requirement to live with the member.

Items 12 and 13 amend section 1.3.37 of the Principal Determination which provides the definition of 'recognised other persons'. The items make the following amendments.

- Item 12 amends subsection 1.3.37.1 to include the requirement for a recognised other person to live with the member.
- Item 13 inserts new subsection 1.3.37.3 which exempts an adult child who is absent from the home due to education reasons from the requirement to live with the member.

Item 14 amends section 1.3.38 of the Principal Determination which provides the conditions for the CDF to recognise a member's partner. The item repeals and substitutes the section to remove limitations on the CDF's decision to recognise relationships under the section.

Items 15 and 16 amend section 1.3.39 of the Principal Determination which provides the conditions for a member's partner to be recognised as a de facto partner. The items make the following amendments.

- Item 15 repeals and substitutes subsection 1.3.39.1 to include the reference to section 2F of the *Acts Interpretation Act 1901* in the substantive provision.
- Item 16 repeals and substitutes paragraph 1.3.39.3.c to remove limitations on temporary separation, as well as a CDF decision point which is no longer required.

Item 17 repeals various provisions in Chapter 1 of the Principal Determination as a consequence of the changes made by this Schedule.

Schedule 2—Domestic amendments

Items 1, 7, 9, 20, 21, 23 and 24 amend various provisions within the Principal Determination which provide definitions for terms used throughout the Principal Determination to promote the use of contemporary drafting styles.

Item 2 amends section 2.2.8 of the Principal Determination which provides a member with transition absence to assist them with attending specified activities and courses in preparation for civilian life when they change service category or cease service with the ADF. The new section includes the following changes.

- The term "approved absence" has been changed to "transition absence" to properly reflect the type of absence available to a member to attend activities and courses in preparation for civilian life when they change service category or cease service with the ADF.
- The number of days available to a member for transition related activities has been increased from 23 to 25 days.
- The number of days a member may be granted transition absence for transition related administrative activities has been increased from 3 to 5 days.

Item 3 amends the heading of section 2.2.9 of the Principal Determination to amend the name of the absence that may be applied for under the section as a consequence of the changes made by item 1 of this Schedule.

Item 4 amends paragraph 2.3.22.1.a of the Principal Determination which provides a circumstance in which a member is eligible for a special benefit payment. The paragraph has been amended to update a cross reference.

Items 5, 6, 8, 10 to 17, 19 and 22 amend various provisions within the Principal Determination to incorporate exceptions into the section to which they apply. These changes promote the use of contemporary drafting styles.

Items 18 and 25 amend sections 5.6.4 and 9.6.12 of the Principal Determination respectively to remove deeming provisions from the sections and promote the use of contemporary drafting styles.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

Schedule 3—Overseas amendments

Items 1, 2 and 9 amend various provisions of the Principal Determination to provide clarification on the provision of recreation leave when taken in conjunction with a rest period.

Items 3, 10, 12 and 13 amend various provisions of the Principal Determination to remove deeming provisions from the sections and promote the use of contemporary drafting styles.

Item 4 amends section 14.2.4 of the Principal Determination which provides that a member's dependants must obtain a pre-departure certificate of fitness before travelling with the member on a long-term posting overseas. The section has been amended to replace the acronym "JHSA" with "JHC" to reflect the current name of the Joint Health Command.

Item 5 repeals and substitutes subsection 14.2.4.2 of the Principal Determination which provides that pre-departure certificates of fitness must be provided by doctors and dentists authorised by Defence, what the purpose of certificates are and who is to approve the results report. The subsection has been amended to make the following changes:

- The subsection has been redrafted to promote the use of contemporary drafting styles.
- Note 1 has been included to specify that the provisions under the *Privacy Act 1988* apply to certificates under section 14.2.4 of the Principal Determination.
- Note 2 has been included to set out who the certificates are to be provided to and who is to be informed of any approval or if any further action is required.
- Note 3 has been included to provide that the Joint Health Command must file the certificates as Official: Sensitive, Personal privacy//Health Information. This will ensure that the personal medical information contained on the certificates is filed in a manner that will maintain the privacy of the member's dependants and that the information will only be used for the intended purpose. The file and its contents will be managed in accordance with the *Privacy Act 1988* and the *Archives Act 1983*.

The requirement for the member's dependants to obtain medical and dental certificates before leaving Australia to accompany the member on the overseas appointment is to ensure that, if the dependant has any medical, dental, physical, mental or intellectual condition, there will be suitable facilities for the ongoing treatment and care of the dependant in the location.

Item 6 repeals subsection 14.2.4.3 of the Principal Determination. The information provided by the subsection is administrative in nature and has been included in the notes under subsection 14.2.4.2 as a consequence of the changes made by item 5 of this Schedule.

Items 7, 11 and 14 amend various provisions of the Principal Determination to update cross references and promote the use of contemporary drafting styles.

Item 8 amends section 14.3.13 of the Principal Determination to incorporate exceptions into the section to which they apply and promote the use of contemporary drafting styles. Subsection 14.3.13.3 has been added to provide that a dependant under the section can include a person who would be recognised as a child under section 1.3.35 of the Principal Determination. Under section 12.3.5, the definition of 'dependant' includes a person who is under the age of 18, this change will extend the eligibility under section 14.3.13 to a dependant who is under 21 years of age.

Technical amendments made under this Schedule do not alter the underlying policies, or the benefits which are currently provided.

Defence Determination, Conditions of service Amendment Determination 2024 (No.4)

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:

- Amend definitions relating to the categorisation of a member's family to promote alignment with the underlying policies.
- Amend the leave provisions of career transition to increase the number of absence days that a member may access during the lifetime of their ADF career.
- Provide that the *Privacy Act 1988* applies to a member's dependants' certificates of fitness and how the certificates must be filed by the Joint Health Command when members travel to a long-term posting overseas. The amendment is in response to a question from the Senate Scrutiny of Delegated Legislation Committee Secretariat regarding the privacy provisions for medical information relating to a member's dependant and our subsequent commitment to amend the Principal Determination.
- Make technical amendments to the Principal Determination that update cross references and definitions, promote the use of contemporary drafting styles and improve readability. These amendments do not alter the underlying policies, or the benefits that are currently provided.

Human rights implications

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.

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 ensures just and favourable conditions of work, including remuneration, safe and healthy conditions, equal opportunity and reasonable limitations.

Right to personal privacy

The protection of a person's privacy engages Article 12 of the Universal Declaration of Human Rights. Article 12 states that no one shall be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks upon their honour and reputation.

Assessment of compatibility

Schedule 1 is compatible with human rights as it ensures that the benefits provided to a member as part of their conditions of service are reasonable, necessary and proportionate for the member's circumstances, including their resident family and recognised other persons.

Schedule 2 is compatible with human rights as it provides:

- Benefits for a member to assist them attend specified activities and courses in preparation for civilian life when they change service category or cease service with the ADF.
- The manner in which certificates of fitness, required for a member's dependant when they accompany a member on a long-term posting overseas, are to be filed to ensure the requirements of the *Privacy Act 1988* are met.

Schedule 2 and 3 make other amendments to the Principal Determination which do not change the underlying policies or benefit. As such, they do 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*.