EXPLANATORY STATEMENT

Defence Determination 2017/9

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the Defence Act 1903 (the Defence Act) and in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (AIA Act). Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the Legislation Act 2003. These instruments are also subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act.

Chapter 16 of the Principal Determination sets out provisions dealing with overseas hardship location conditions of service for members of the Australian Defence Force (ADF).

The purpose of this Determination is to enable the Commonwealth to directly pay for assisted leave travel rather than only reimburse a member for their travel costs. Assisted leave travel is provided to members living in hardship locations overseas. It allows them to travel to a regional centre to access services and items not available at the hardship location as well as obtain relief from the environment. Formerly the member could only be reimbursed their travel costs.

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

Section 2 of this Determination provides that the Determination commences on 6 April 2017.

Section 3 provides that this instrument has authority under section 58B of the Defence Act 1903.

Section 4 specifies that the amendment is made to the Principal Determination, as amended.

Section 5 substitutes subsection 16.4.5 of the Principal Determination, which provides the amount of assisted leave travel available to a member. Assisted leave travel is provided to members living in hardship locations overseas. It allows them to travel to a regional centre to access services and items not available at the hardship location as well as obtain relief from the environment. Formerly the member could only be reimbursed their travel costs. This created a financial burden for some members who had to produce as much as $20,000 up front. Section 5 provides that the travel costs may also be directly paid by the Commonwealth.

Section 6 repeals subsection 16.4.12.4 of the Principal Determination, which provided that if written proof of travel is not provided for assisted leave travel that the Commonwealth paid for in advance, the member must repay the full amount. Section 16.4.12 has provision relating to proof of travel and the provision for repayment is not suited to the section. Section 7 of this Determination places the repayment provision in its own section.

Section 7 inserts section 16.4.12A into the Principal Determination. It provides that a member must repay the full amount of assisted leave travel to the Commonwealth in the following circumstances:

- The travel does not occur. To satisfy the Public Governance, Performance and Accountability Act 2013 a debt recovery provision is necessary consequential upon Section 5 of this Determination, which provides that the Commonwealth can directly pay for the member's assisted leave travel in advance of the travel.

- The proof of travel required under section 16.4.12 of the Principal Determination is not provided. This provision was repealed from section 16.4.12 consequential upon section 6 of this Determination.
Consultation

Navy, Army, Air Force and Defence International Policy Division were consulted in the preparation of this Determination. The rulemaker was satisfied that external consultation was not required. The instrument makes a minor adjustment to the level of assistance provided to members of the Australian Defence Force.

Authority: Section 58B of the
_Defence Act 1903_
Statement of Compatibility with Human Rights

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

Defence Determination 2017/9, Assisted leave travel – amendment

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.

Overview of the Determination

The purpose of this Determination is to enable the Commonwealth to directly pay for assisted leave travel rather than only reimburse a member for their travel costs. Assisted leave travel is provided to members living in hardship locations overseas. It allows them to travel to a regional centre to access services and items not available at the hardship location as well as obtain relief from the environment. Formerly the member could only be reimbursed their travel costs.

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 1 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.

This Determination does not limit the right to an adequate standard of living. It provides additional benefit to members who are required to perform their duties at an overseas posting location.

ADF members who are posted to some overseas locations may experience adverse living conditions during service. This could cause significant adverse effect on the lifestyle or welfare of members and their dependants, as a result of the living conditions at the posting location, as compared with those in Australia. Those hardship conditions can include but are not limited to climate, health care facilities, infrastructure and isolation. Hardship may be addressed by ensuring dependants are not sent to particularly difficult locations.

Defence assists a member posted to hardship locations to travel to obtain a break from the environment or to access adequate health and shopping. In the past this assistance could only be reimbursed to the member. This Determination enables the Commonwealth to directly pay the travel costs on behalf of the member.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Lisa Annette Arnold, Acting Assistant Secretary People Policy and Employment Conditions