EXPLANATORY STATEMENT

Defence Determination 2017/19

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 15 of the Principal Determination sets out provisions dealing with living and working on long-term posting overseas for members of the Australian Defence Force (ADF).

This Determination has the following purposes.

- To provide St John's College, Southsea, England as a Commonwealth funded option boarding school for a child who is a dependant of a member posted to Cherbourg, France and who is studying in school years 10, 11 or 12.

- To provide reunion benefits and escort provisions for a child who is a dependant of a member posted to Cherbourg, France and is travelling from St John's College, Southsea, England to Cherbourg, and return.

- To provide benchmark schools for Cherbourg, France and amend the benchmark and summer schools for Bangkok, Thailand.

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

Section 2 is the commencement provision for the Determination and includes a table setting out the details of the commencement of sections of the Determination. Column 1 of the table sets out the provisions in numbered items, column 2 sets out the commencement and column 3 sets out date/details. Information in column 3 does not form part of the Act, so information can subsequently be inserted in the column (or edited) in a published version of the Determination.

Item 1 in the table provides that the whole of this Determination commences on 15 June 2017.

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

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 sets out amendments to the Principal Determination.

Section 1 adds section 15.3.15B to the Principal Determination, which provides a member, or a nominated adult, with travel costs between France and England for themselves to escort the member's child who is a dependant on a reunion travel visit. The provision ensures that a member is able to utilise their reunion travel benefit and is limited to a member on a long term overseas posting to Cherbourg, France. Special provisions were made for this posting location because it is often not possible, due to age restrictions imposed by travel carriers, for a child to travel unaccompanied to the member's posting location.

The section provides the conditions of eligibility as follows.

- The member must be on a long-term overseas posting to Cherbourg, France.

- The member has been approved a reunion visit for a child who is a dependant.
The child who is a dependant has been approved Commonwealth funding to attend and board at St John's College, Southsea, England.

The child is a dependant and is not already being accompanied by an adult.

Travel between France and England is to be by ferry or by the most economical means if ferry travel is unavailable.

The escort must be a person over 18 years old and is either the member, family of the member or an adult at the posting location who is nominated by the member.

Section 2 amends subsection 15.3.16.1 of the Principal Determination. This amendment adds an exception to the provisions that allow a member, spouse or partner to visit a child who is a dependant at an overseas post at Commonwealth expense. This exception provides that the member cannot travel at Commonwealth expense to the dependant's boarding school location in Southsea, England unless they are escorting a dependant under section 15.3.15B, as inserted under section 1 of Schedule 1 to this Determination.

Section 3 adds section 15.6.22A and section 16.5.22B to the Principal Determination. Section 15.6.22A provides for members on a long-term overseas posting to Cherbourg, France to be able to board a child who is a dependant at St John’s College, Southsea, England at Commonwealth expense. This is limited to a child attending school in years 10, 11 or 12 with provision for the Assistant Secretary People Policy and Employment Conditions to approve a child who is a dependant to attend the school below year 10 in exceptional circumstances. The section provides the following benefits.

- Education assistance including compulsory tuition fees and accommodation and boarding fees.
- Provision for a member to elect that education assistance be paid directly to the school.

Section 15.6.22B provides that members who have a child who is a dependant enrolled at St John’s College, Southsea, England at Commonwealth expense under section 15.6.22A may be eligible for travel costs when their child is starting or ending boarding school. The section provides the following benefits.

- Member's eligibility for travel costs and also where the Commonwealth may pay travel costs for a member or spouse of partner on limited reunion travel.
- Travel between France and England is to be by ferry or by the most economical means if ferry travel is unavailable.

Schedule 2 sets out the amendments to the Principal Determination.

Sections 1 and 2 amend Annex 15.6.A of the Principal Determination, which provides a list of schools that set the 'benchmark' for the amount of education assistance to be reimbursed to a member who has a child who is a dependant and requires education at an overseas posting location.

After an assessment of suitable schools in Cherbourg the following schools were recommended as most suitable for providing the quality of education comparable to Australian education standards. Three new schools are inserted into the Annex for the new overseas posting location of Cherbourg, France.

- L’école Gibert Zola (school years 1 to 5).
- Le collège Bucaillé Charcot (school years 6 to 9).
- Le lycée Victor Grignard (school years 10 to 12).

After a re-assessment of suitable schools in Thailand, the current Thailand benchmark school, Bangkok Patana School, is substituted with the approved NIST International School. The school offers greater access and security for Defence members and their dependants, provides education comparable to Australian education standards, and is able to offer positions to Australian students at the pre-school, primary and secondary levels on one campus.
Section 3 amends Annex 15.6.B of the Principal Determination, which provides locations of approved summer schools for overseas posting locations. A member whose child is a dependant attending an approved summer school may be eligible to be reimbursed the associated costs. The NIST International School is inserted into the list in Annex 15.6.B as another summer school option for Thailand.

**Consultation**

The following areas within Defence were consulted and agreed to the changes in this Determination.

- Schedule 1 sections 1 to 3 and Schedule 2 section 1 – Navy, International Policy Division and Capability Acquisition and Sustainment Group
- Schedule 2 sections 2 and 3 – Navy, Army, Air Force and International Policy Division.

The Groups and Services responsible for the members at each location confirmed the funding line now and into the future.

**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 2017/19, Education costs and benchmark schools – 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

This Determination makes amendments to Defence Determination 2016/19, Conditions of service. This Determination has the following purposes.

- To provide St John’s College, Southsea, England as a Commonwealth funded option boarding school for a child who is a dependant of a member posted to Cherbourg, France and who is attending school in years 10, 11 or 12.
- To provide reunion benefits and escort provisions for a child who is a dependant of a member posted to Cherbourg, France and is travelling from St John’s College, Southsea, England to Cherbourg, and return.
- To provide benchmark schools for Cherbourg, France and amend the benchmark and summer schools for Bangkok, Thailand.

Human rights implications

The protection of a child’s right not to be separated from their parents

The protection of a child’s right not to be separated from their parents engages Article 9 of the Convention of the Rights of the Child. Article 9 guarantees the widest possible protection for a child who is separated from one or both parents to maintain personal relations and direct contact on a regular basis.

Legitimate objective; Defence often requires its members to relocate to new locations around the world. It recognises the importance of providing assistance to regularly reunite the member with family members who are unable to accompany the member to their posting location.

Reasonable, necessary and proportionate; This Determination ensures a child, who is unable to travel alone on a reunion visit, is able to be safely escorted to the posting location by a family member or an adult at the posting location chosen by the member. It allows a member to utilise their reunion travel entitlement for their child dependant at no financial detriment.

The protection of a person’s right to care for dependants

The protection of a person’s right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

The benchmark school and education assistance provisions in this Determination advance the rights under Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education.

Defence provides a range of benefits to members posted overseas to assist members and their families to not suffer a disadvantage because of the requirement for the member to live and work overseas. Benchmark schools are nominated to set the ‘benchmark’ for the amount of education assistance to be reimbursed to members for their children’s education whilst posted overseas. This Determination provides benchmark schools for Cherbourg, France and Bangkok, Thailand.

Conclusion

This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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