EXPLANATORY STATEMENT

Defence Determination 2017/35

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 9 of the Principal Determination sets out provisions dealing with travel costs in Australia for members of the Australian Defence Force (ADF).

The purpose of this Determination is to provide the payment of additional travel costs when a member or their dependants on remote location leave travel have to travel outside of their posting location to an airport that has commercial flights. The remote location leave travel benefit is air travel from a member’s remote posting location to the nearest capital city. However, some remote locations do not have airports that provide commercial air travel so members in these locations have to travel to the nearest airport with commercial air travel. This means that the members incur additional costs that they would not otherwise have had to pay. The changes made by this determination will alleviate that additional cost.

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 19 October 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 amends Defence Determination 2016/19, Conditions of service

Sections 1 to 5 amend sections 9.4.26 to 9.4.28 and sections 9.4.30 and 9.4.32 of the Principal Determination. Subsection 2 of each of the sections provide the travel benefit for remote location leave travel for member’s in different circumstances. These subsections are being amended to provide that the travel benefit can be from the closest airport that provides commercial air travel. This ensures that members who are posted to a location where there is no airport that provides commercial travel are able to access the remote location leave travel benefit.

Section 6 amends subsection 9.4.23.2 of the Principal Determination, which provides that a member may use their remote location leave travel benefit towards the cost of travel to another destination. The subsection is being amended to clarify the provision. No change has been made to the benefit.

Section 7 substitutes subsection 9.4.32.3 of the Principal Determination, which provides the maximum amount that may be paid to a member when they offset their remote location leave travel to another destination. The provision has been split into two subsections to make clear what benefits may be paid to a member under subsection 2 when different circumstances apply. The revised subsection 3 provides that the maximum amount that may be paid to a member is the cost of a return air fare between the remote location and the nearest capital city. Additional costs that may be paid to a member when they offset their remote location leave travel that were included in this subsection are now provided in the new subsection 3A.

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Section 7 also inserts a new subsection 3A into the Principal Determination. This new subsection includes additional amounts that may be paid to a member when they offset their remote location leave travel that were previously provided under subsection 3. The maximum amount payable to the member under subsection 2 includes the cost of a return air fare from a location that is not the remote location and the nearest capital city. The amount payable also includes the cost of transport between the member’s posting location and the closest location that has an airport which provides commercial air travel.

Section 8 substitutes section 9.4.40A of the Principal Determination, which provides that a member who is posted to Woomera and is eligible for remote location leave travel may be paid vehicle allowance when they or their dependants have to travel by private vehicle between Woomera and the closest airport at Olympic Dam. The section is being amended to include provisions for remote locations that do not have a commercial airport to provide the payment of the lesser of vehicle allowance or public transport for return travel for members and their dependants who need to travel outside of the posting location to access commercial air travel. The payment of the costs is in addition to the cost of return air fare travel that the member is eligible for under schemes A and B of remote location leave travel. The payment of these costs will alleviate the financial burden on members that is caused due to the distance between the member's posting location and the closest airport.

Consultation

Navy, Army and Air Force were consulted and agreed to the changes made by this Determination. No external consultation was undertaken in accordance with section 17 of the Legislation Act 2003 as the amendment is of a minor or machinery nature and does not substantially alter existing arrangements.

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 2017/35, Remote location 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

This Determination amends Defence Determination 2016/19, Conditions of service.

The purpose of this Determination is to provide the payment of additional travel costs when a member or their dependants on remote location leave travel have to travel outside of their posting location to an airport that has commercial flights. The remote location leave travel benefit is air travel from a member’s remote posting location to the nearest capital city. However, some remote locations do not have airports that provide commercial air travel so members in these locations have to travel to the nearest airport with commercial air travel. This means that the members incur additional costs that they would not otherwise have had to pay. The changes made by this determination will alleviate that additional cost.

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.

Legitimate objective: ADF members who are posted to some remote locations that 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 remote location. Those hardship conditions can include, but are not limited to, climate, health care facilities, infrastructure and isolation.

Reasonable, necessary and proportionate: Remote location leave travel assists members, and their dependants, posted to remote locations to travel at Commonwealth expense to locations that will give relief from the climate and isolated conditions of the remote location, and also to access facilities that may not be available in the location. This determination provides additional assistance to members who are posted to a remote location that does not have a local commercial airport by providing the payment of vehicle allowance or public transport costs for the journey between the posting location and the closest airport for commercial air travel. The payment of the costs will alleviate the financial burden on members that is caused due to the distance between the member's posting location and the closest airport.

Conclusion

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

Jay Andrew Clarke, Acting Assistant Secretary People Policy and Employment Conditions