EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Victoria Cross for Australia, long service leave, travel and overseas public holidays) Determination 2019 (No. 4)

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.

This Determination amends the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 5 sets out provisions dealing with leave.
- Chapter 9 sets out provisions dealing with travel in Australia.
- Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

This Determination has the following purposes.

- It amends the Victoria Cross of Australia provisions relating to the payment or reimbursement of expenses relating to representational duties to include a discretion for the Chief of the Defence Force (CDF).
- It amends the long service leave provisions relating to the pro rata payment of long service leave when a member's service ends because the member has reached their retirement age or a date authorised under Defence Regulation 2016.
- It amends a meal allowance rate for a member after 21 days travel.
- It amends the overseas public holiday provisions.

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

Section 2 provides that this instrument commences on 24 January 2019.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 omits and substitutes subsection 4.7.4.2 of the Principal Determination which provides what costs a Victoria Cross for Australia recipient may be paid or reimbursed for representational duties. The subsection has been amended to include a new CDF discretion for the approval of payment or reimbursement of specified costs that relate to representational duties. A new subsection 2A has been included so that the CDF must be satisfied that the payment or approval of costs and the frequency of the costs under subsection 2 are reasonable.

Section 2 omits and substitutes paragraph 5.5.28.1.c of the Principal Determination. Section 5.5.28 sets out when a member may be eligible for a pro rata payment of their long service leave entitlements when their service ends for specific reasons. Paragraph 1.c provided that when the member has reached their retirement age as one of those reasons. This paragraph has been amended to include the day on which the member ceases to be allowed to work beyond their retirement age, the provision to allow a member to work beyond their retirement age is provided under section 23(2) of Defence Regulation 2016. This will allow a member who has been authorised to work beyond their retirement age to still be eligible for a pro rata payment of their long service leave entitlement when their service ends.

Section 3 amends Part 2 of Annex 9.5.B of the Principal Determination which sets the amount of meal allowance a member may receive for travel after 21 days. The rate of meal allowance that a member may receive during a travel period when they are boarding without cooking facilities is being amended from $764.45 to $765.45 a week. The meal allowance rate that was determined by Defence Determination 2017/29, Travel allowances – amendment was incorrect. This Determination corrects the rate.

Sections 4 and 5 amend section 15.1.4 of the Principal Determination which provides public holidays overseas.

- Section 4 omits and substitutes subsection 15.4.1.3, which provided which public holiday a member was to observe. This subsection has been amended to provide that when a member is not required for duty the member is granted short-absence from duty for a public holiday in the location where they are performing duty.

- Section 5 amends subsection 4, which provides when a member may apply to substitute a different day for a public holiday, to remove two examples which are not legislative in nature.

Sections 6 and 7 amend table item 6 of subsection 15.2.7.2 and paragraph 16.2.3.b, respectively, of the Principal Determination. The changes amend incorrect cross references.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

Consultation

Navy, Army and Air Force were consulted in regards to the changes in sections 1 and 2 of this Determination.

Consultation is not considered necessary for the remaining changes in this determination as they fall within the bounds of routine housekeeping of established benefits. The rulemaker was satisfied that further external consultation was not required.

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

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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 has the following purposes.

- It amends the Victoria Cross of Australia provisions relating to the payment or reimbursement of expenses relating to representational duties to include a discretion for the Chief of the Defence Force (CDF).
- It amends the long service leave provisions relating to the pro rata payment of long service leave when a member's service ends because the member has reached their retirement age or a date authorised under Defence Regulation 2016.
- It amends a meal allowance rate for a member after 21 days travel.
- It amends the overseas public holiday provisions.

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.

Victoria Cross for Australia

Legitimate objective: Members awarded the Victoria Cross for Australia and their family members may be requested to attend representational activities. Attendance at these activities may involve financial expense to purchase or hire appropriate clothing or for babysitting costs if the member and their partner are attending the activity.

Reasonable, necessary and proportionate: When a member attends representational activities the member may be paid or reimbursed reasonable costs that are associated with their representational duties. This Determination provides that the CDF must be satisfied that the costs and frequency of the payment or reimbursement are reasonable for the member's representational duties.

Long service leave

Legitimate objective: When a member leaves the ADF they may choose to receive a payment of their long service leave entitlements. If the member has more than one year and less than 10 years of accrued service they may be entitled to a pro rata payment when they leave the ADF for a specified reason, one of which is that the member has reached their retirement age.

Reasonable, necessary and proportionate: This Determination includes that a member may be eligible for a pro rata payment of their long service leave credits when they leave the ADF when they have been approved to work beyond their retirement age under subsection 23(2) of Defence Regulation 2016.

The remaining changes in this Determination are administrative only and do not affect a members rights or benefits.
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.

Derek Julian Cox, Acting Assistant Secretary People Policy and Employment Conditions