

EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Short-term duty travel costs, club membership and decision makers) Determination 2019 (No. 8)

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 13 of the Principal Determination sets out provisions dealing with short-term duty overseas.
- Chapter 15 of the Principal Determination sets out provisions dealing with living and working on long-term posting overseas.
- Chapter 16 of the Principal Determination sets out provisions dealing with overseas hardship locations.

This Determination has the following purposes.

- To include new overseas locations for short-term duty travel costs.
- To make amendments to the provisions relating to club membership at a posting location.
- Substitute a position as a directly conferred decision maker.

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

Section 2 provides that this instrument commences on 7 March 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Sections 1 to 16 amend Annex 13.3.A of the Principal Determination, which provides the travel cost rates for locations overseas.

- Sections 1, 3, 5 to 11, 13 to 16 insert Algeria, Guam, Mongolia, Morocco, South Sudan, Tanzania and Tuvalu as overseas locations for short-term duty travel costs.
- Sections 2 and 10 insert the Federated States of Micronesia as an overseas location. This country was formally provided under the region of Micronesia, which has been omitted by sections 4 and 12. By changing the location from a region to a country, it removes confusion as to which overseas travel cost rate is to be applied when another country, such as Guam, is within the region of Micronesia.

Schedule 2 – Amendment to Defence Determination 2016/19, Conditions of Service

Section 1 omits and substitutes Chapter 15, Part 8 of the Principal Determination, which provides provisions relating to club membership for members living and working on longer-term posting overseas.

- Section 15.8.1 provides the purpose of the Part, which is to provide members and their dependants on long term posting the opportunity to pursue sporting, recreational and fitness activities.
- Section 15.8.2 provides a definition of the term member's location, which is used throughout the Part.
- Section 15.8.3 provides members to whom the Part applies.
- Section 15.8.4 provides when a member is eligible for the cost of membership to an approved club, the maximum benefit a member can receive.
- Section 15.8.5 provides CDF discretion to approve additional club membership costs.
 - Subsection 15.8.5.1 provides a CDF discretion to approve additional membership costs considered reasonable. This allows member's access to facilities which may not be accessible under the basic membership fee.
 - Subsection 15.8.5.2 provides that the CDF may approve addition club membership costs for a member's dependant during a reunion visit to the location where the member has received a benefit under the Part.
- Section 15.8.6 provides that benefits under the Part can be paid by way of reimbursement to the member or directly to the service provider.
- Section 15.8.7 provides a table which sets out the list of locations, and the corresponding approved club.

Schedule 3 – Amendment to Defence Determination 2016/19, Conditions of Service

Sections 1 and 2 and 4 to 6 amend various sections within the Principal Determination. These sections replace the position of "Director Military Conditions and Housing Policy" with the position of "Director Military Personnel Policy" as a directly conferred decision maker. This change is to reflect a restructure of overseas policy responsibilities within Defence.

Section 3 omits an example from subsection 15.1.5.3 of the Principal Determination. The example is not legislative in nature and the removal does not affect any members.

Consultation

International Policy Division and Defence Travel were consulted in the development of schedule 1 of this Determination.

The Directorate of Attaché and Overseas management were consulted in the development of schedule 2 of this Determination

The rule-maker 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 makes amendments to Defence Determination 2016/19, *Conditions of service*.

This Determination has the following purposes.

- To include new overseas locations for short-term duty travel costs.
- To make amendments to the provisions relating to club membership at a posting location.
- Substitute a position as a directly conferred decision maker.

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.

Short-term duty

Legitimate objective: Defence members may travel to perform short-term duty in overseas locations. This could cause adverse effect on the lifestyle of members, as a result of extra costs at the overseas location, as compared with those in Australia.

Reasonable, necessary and proportionate: Short-term duty travel costs ensure that members who travel on short-term overseas duty receive an appropriate amount of for accommodation, meal and incidental costs while they are there. This Determination adds Algeria, Guam, Mongolia, Morocco, South Sudan, Tanzania and Tuvalu as new locations and sets meal and incidental rate limits for members performing short-term duty at these locations. It also replaces the region Micronesia with the Federated States of Micronesia as an overseas location, this is to remove confusion as to which overseas travel cost rate is to be applied when another country, such as Guam, is within the region of Micronesia.

Club membership

Legitimate objective: 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. Approved clubs are nominated to assist members and their dependants pursue sporting, recreational and fitness activities, when other suitable facilities are not available.

Reasonable, necessary and proportionate: Club membership is made available for a member and their dependants on a long-term posting. This Determination provides for the reimbursement of club membership of an approved club for a member or their dependants at a posting location.

This Determination also substitutes a directly conferred decision maker to reflect a restructure of overseas policy responsibilities within Defence. This change does not affect any human rights.

Conclusion

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions