

EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Public transport and school transport costs) Determination 2019 (No. 13)

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.

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 the current figures used to calculate how much a member may be reimbursed for public transport costs at an overseas posting location when travelling to and from their normal place of duty.
- To provide the current figures which are to be used to calculate how much a member may be reimbursed for school transport costs at an overseas posting location when the member has a child who is a dependant travelling to and from school.

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

Section 2 provides that this instrument commences on 16 May 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 amends paragraph 15.3.7.1.b of the Principal Determination. The amount of AUD 1,350.20 has been omitted and substituted with AUD 1,371.70. The new amount reflects the increase in costs based on Canberra (Transport Canberra) bus rates for the 2019 calendar year.

Sections 2 and 3 amend subsection 15.3.7.2 of the Principal Determination. The subsection omits and substitutes the formula for calculating the claimable excess transport costs eligible contribution amount for public transport at an overseas location. The formula uses 213 days as the number of work days applicable to a member at an overseas location for the 2019 calendar year. This number is based on the number of work days in a year, less public holidays and 20 annual leave days.

Section 4 amends paragraph 15.6.11.1.b of the Principal Determination. The amendment omits the amount of AUD 368.90 which is substituted with AUD 383.10. A member may be reimbursed the excess costs of school transport if they exceed this figure, calculated for the 2019 calendar year.

Sections 5 and 6 amend subsection 15.6.11.2 of the Principal Determination. The subsection omits and substitutes the formula for calculating the claimable excess transport costs eligible contribution amount for school transport costs at an overseas location. The formula uses 157 as the number of days applicable for a child attending school at an overseas location for the 2019 calendar year.

The formula requires the cost of school transport in the overseas location to be converted to AUD for the purposes of calculating the reimbursement. The exchange rate which is to be used by a member to convert the figure, from the currency in which the cost was incurred to AUD, is available on the member's fortnightly payment summary, which is provided to the member by the Department of Foreign Affairs and Trade, for the payday prior to 1 March of the relevant year. If a situation arises where this rate is unavailable to the member, it will be provided by the Department of Defence directly. Specifics relating to the how a member can access this information will follow this subsection as guidance on the Defence Pay and Conditions website located at www.defence.gov.au/PayAndConditions/ADF/Chapter-15/default.asp.

Consultation

Navy, Army and Air Force, International Policy Division (Directorate of Attaché and Overseas Management) and the Overseas Administration Team were consulted in the development of this Determination. 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.

- To provide the current figures used to calculate how much a member may be reimbursed for public transport costs at an overseas posting location when travelling to and from their normal place of duty.
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Human rights implications

Right to the enjoyment of just and favourable conditions of work

The protection of a person's right to an adequate standard of living engages Article 11 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.

Legitimate objective: This Determination adjusts member contribution rates towards public transport costs and school transport costs, for members posted overseas.

Reasonable, necessary and proportionate: A policy principle underpinning many aspects of ADF member overseas conditions is that members posted to locations that are more expensive to live in than Australia should not be disadvantaged by those expensive local conditions and the Commonwealth should provide a subsidy to the member. Transport cost benefits are examples of the application of this policy.

Members in Australia are not ordinarily reimbursed the costs of travelling to and from work, or the costs of their children travelling to and from school. It is a long-standing industrial principle that these are private expenses. The public transport and school transport benefits do pay for these expenses, but the member is required to make a contribution. The contribution for public transport costs and school transport costs is based on the Australian public transport cost (with Canberra's costs chosen as a benchmark, as there is some fluctuation between States).

The requirements on members to contribute towards these benefits ensure that they do not receive a 'windfall gain' by being posted to an expensive overseas location, but have approximate parity with their working conditions in Australia.

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