EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Approved forms and privacy) Determination 2019 (No. 21)

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.

This Determination makes amendments to the following chapters of the Principal Determination.

- Chapter 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions for members of the Australian Defence Force (ADF).
- Chapter 3 sets out provisions dealing with salaries and bonuses for members of the ADF.
- Chapter 4 sets out provisions dealing with allowances and reimbursements for members of the ADF.
- Chapter 5 sets out provisions dealing with leave for members of the ADF.
- Chapter 6 sets out provisions dealing with relocations on posting in Australia for members of the ADF.
- Chapter 7 sets out provisions dealing with housing and meals for members of the ADF.
- Chapter 8 sets out provisions dealing with members of the ADF and their dependants.
- Chapter 14 sets out provisions dealing with relocating to or from long-term posting overseas for members of the ADF.

This Determination has the following purposes:

- To remove elements from the Principal Determination that are of a non-legislative nature such as examples, non-examples, cross-reference notes, see notes and forms.
- To remove any specific reference to a form number or name and replace it with the defined term ‘approved form’.
- To put beyond doubt Defence’s right to collect, use or disclose personal information in the administration of member benefits.

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

Section 2 provides that this instrument commences on 31 July 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 amends provisions relating to forms.

Section 1 omits and substitutes section 1.2.5 from the Principal Determination, which provided that the Assistant Secretary People Policy and Employment Conditions could approve a form required to be completed by a member for a benefit under the Principal Determination. This provision is moved to Chapter 1 Part 3, consequential upon schedule 1 section 2 of this Determination. The substituted section
provides that if an 'approved form' is specified in relation to a benefit, a member must complete that form in order to receive that benefit.

Section 2 inserts a new defined term 'approved form' at section 1.3.5A of the Principal Determination. The term replaces all mandated forms throughout the Principal Determination, made by subsequent sections of this Determination. An 'approved form' is the form or manner, approved by the Assistant Secretary People Policy and Employment Conditions, a member must follow to apply for or accept an offer of benefits or the Commonwealth must follow to offer a member benefits. This may be a physical form that must be completed and submitted or it could include other processes such as submitting details electronically via Defence's self-service system. Introducing the term 'approved form' simplifies the Principal Determination by removing a substantial amount of process. It also removes the need for amending determinations if the process for offering or applying for benefits changes. In each instance where a specific process is required for a benefit, the form and manner (approved form) is provided as information, alongside a copy of the legislation (the Principal Determination), on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Sections 3, 4, 7, 11, 13, 14, 17, 19 to 23, 24, 25 to 28, 30 to 34 substitute references to specific form names with 'approved form' defined under section 1.3.5A of the Principal Determination, consequential upon schedule 1 section 2 of this Determination. In addition to these changes, notes, cross-reference notes, examples and non-examples have been removed from these provisions wherever occurring, as they are non-legislative in nature and their removal has no impact on the operation of the Principal Determination.

Section 5 omits subsection 1.3.93.6 of the Principal Determination, which provided that the Chief of the Defence Force may determine the form a member must use to apply for recognition of a relationship for the purpose of eligibility for Defence benefits. This provision is now in the definition of a partner – de facto under subsection 1.3.89.2 of the Principal Determination, consequential upon schedule 1 section 4 of this Determination. The member must now use the 'approved form'.

Section 6 omits section 3.2.16 of the Principal Determination, which provided that a member will not be paid salary or allowances if they do not notify Defence of their hours of duty by using the electronic personnel pay system. The section is omitted as it conflicts with section A.1.5 of Defence Force Remuneration Tribunal Determination No. 2 of 2017, Salaries, which provides that a member is eligible to be paid if they were required for duty and performed that duty.

Sections 7 to 10 amend section 4.9.16 of the Principal Determination, which provides health support allowance to members of the Reserves who provide capability to Defence at short notice. The changes remove process and guidance from the section which is non-legislative in nature. The information is to be included as guidance on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Section 12 omits subsection 4.9.17.3 of the Principal Determination, which provides Defence is authorised to collect sensitive information for the purposes of health support allowance. This is information only and has no legal effect. The information is to be included as guidance on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Section 15 omits subsection 5.3.7.2 of the Principal Determination, which provided that a supervisor who grants leave under the section must follow the administrative process set out under section 5.3.8 of the Principal Determination. The subsection is omitted because it provided process information of a non-legislative nature and also because the section it referenced is omitted by schedule 1 section 16 of this Determination, which is also non-legislative information.

Section 16 omits section 5.3.8 of the Principal Determination, which provided the administrative process for granting a medical absence. The process information is of a non-legislative nature and is to be included as guidance on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Section 18 omits subsection 5.4.33.3 of the Principal Determination, which provides the administrative process that a supervisor must follow in deciding whether to grant recreation leave. The process information is of a non-legislative nature and is to be included as guidance on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Section 25 omits section 6.1.24 of the Principal Determination, which provides the process of how to apply for reimbursement of childcare costs required as the result of a removal. The process information is
Section 28 omits and substitutes section 8.6.4 of the Principal Determination, which provides conditions of eligibility for benefits for a member with a dependant with special needs. The following changes are made.

- The title of the section is changed to better reflect the provisions which relate to benefit eligibility.
- A condition of eligibility formerly under section 8.6.6 is moved to paragraph 8.6.4.c; the member must apply to have their dependant assessed for the amount of assistance they may be eligible for.
- Cross reference information with no legal effect is removed from the section.

Section 29 omits section 8.6.6 of the Principal Determination, which provided that on receipt of each new posting order, a member with a dependant with special needs must apply to have an assessment of the amount of assistance the dependant requires. The rule is moved to section 8.6.4 of the Principal Determination, consequential upon schedule 1 section 28 of this Determination. The requirement to submit the assessment form on each posting is omitted as the member must now only submit the form if the circumstances of their dependant with special needs change. The remainder of the omitted section contained information of a non-legislative nature. The information is to be included as guidance on the Defence pay and conditions website at: http://www.defence.gov.au/PayAndConditions/default.asp.

Schedule 2 amends provisions relating to privacy.

Section 1 inserts section 1.2.6 into the Principal Determination. The new section puts beyond doubt that Defence is authorised, under schedule 1 of the Privacy Act 1988, to collect, use and disclose a member's personal information, including sensitive information, for the purpose of administering member benefits provided under the Principal Determination.

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

The Navy, Army, and Air Force were consulted in the development of this Determination, along with a number of internal stakeholders. 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

Defence Determination, Conditions of service Amendment (Approved forms and privacy) Determination 2019 (No. 21)

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 remove elements from the Principal Determination that are of a non-legislative nature such as examples, non-examples, cross-reference notes, see notes and forms.
- To remove any specific reference to a form number or name and replace it with the defined term ‘approved form’.
- To put beyond doubt Defence's right to collect, use or disclose personal information in the administration of member benefits.

Human rights implications

Forms

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.

Defence offers a variety of benefits to ADF members and their dependants. Some of these benefits have a particular form or manner mandated in which the member must apply. In the past the name and number of the form have been determined which creates an administrative burden when the form changes.

This Determination removes a lot of process and non-legislative provisions from the Principal Determination. It also provides a mechanism in which to mandate the form or manner in which a benefit may be offered or applied for while eliminating the need for future amending determinations if the form or manner were to change.

Privacy

The right to a private life and associated freedoms engages Article 12 of the Universal Declaration of Human Rights. Article 12 guarantees everyone has the protection of the law against interference with their privacy, family, home or correspondence and attacks upon their honour and reputation.

Defence offers a variety of benefits to ADF members and their dependants. This authorises Defence and its agents to collect, use and disclose of personal information about the beneficiaries of benefits provided under the Principal Determination.

Legitimate purpose:

The authorisation only permits the collection, use and disclosure of personal information so far as it is necessary for the administration and determination of benefits provided under the Principal Determination.

Conclusion

This Determination is compatible with human rights because it does not engage any applicable human rights or freedoms.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions