EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (ADF Retention – Carer's leave) Determination 2019 (No. 28)

This Determination amends Defence Determination 2016/19, Conditions of service (Principal Determination), made under section 58B of the Defence Act 1903 (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 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 5 sets out provisions dealing with leave.

The purpose of this Determination is to extend the carer's leave benefit to allow a member to care for close relatives that do not necessarily live with the member.

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

Section 2 provides that this instrument commences on 14 November 2019.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Background

The amendments made by this Determination are endorsed by the ADF Retention Initiative Working Group. They are among several initiatives the working group has identified that will help retain ADF members and meet Defence capability requirements.

Schedule 1—Carer's leave amendments

Section 1 inserts section 1.3.81A into the Principal Determination, which provides the definition for 'close relative'. The definition was formerly located in Chapter 5 Part 9 Division 2 of the Principal Determination, where it applied for the purpose of granting compassionate leave to a member. The definition is moved to Chapter 1 so that the definition applies to the whole Determination. Chapter 5 Part 9 Division 3 now also uses the term 'close relative', consequential upon sections 3 and 4 of this Determination, for the purpose of granting a member carer's leave.

Section 2 omits the definition for 'close relative' under section 5.9.9 of the Principal Determination. The definition is moved to Chapter 1 of the Principal Determination in order to apply to the wider Determination, consequential upon section 1 of this Determination.

Section 3 omits and substitutes section 5.9.11 of the Principal Determination. The purpose of the Part is to provide carer's leave to members to look after family members who are either sick or injured or in the event of an unexpected emergency where a person who normally looks after a member's family member is unavailable. The purpose formerly provided that the benefit is provided for a member to care for their dependants. The purpose is amended to provide that the benefit is available for the member to care for 'close relatives' consequential upon this Determination.
Section 4 omits and substitutes subsection 5.9.12.2 of the Principal Determination, which provides circumstances in which a member may be granted carer's leave. A member was formerly only eligible for carer's leave if their dependants who lived with the member were sick or injured or if an unexpected emergency caused the usual carer of a dependant to be unable to care for that dependant. Section 3 extends a member's eligibility to care for a sick or injured close relative who does not necessarily live with the member. The definition of 'close relative' is provided under section 1.3.81A of the Principal Determination, consequential upon section 1 of this Determination.

Sections 5 and 6 amend paragraphs 5.9.12.3.d and 5.9.12.3.f of the Principal Determination, which cross referenced a subsection of the Principal Determination, restructured by section 4 of this Determination. Sections 5 and 6 correct the cross references.

Section 7 omits and substitutes subsection 5.9.12.4 of the Principal Determination, which provided that a senior representative of each Service (Brigadier (equivalent)) may grant a member additional carer's leave. The discretionary decision is changed to be made by the Chief of the Defence Force (CDF). An instrument of authorisation is to be made by the CDF that authorises more positions (down to Colonel (equivalent)) to grant additional carer's leave. The subsection is restructured to include the factors the CDF has to consider when deciding whether to grant additional carer's leave to a member. These were formerly provided under subsection 5.9.12.4 of the Principal Determination, omitted by section 8 of this Determination.

Section 8 omits subsection 5.9.12.5 of the Principal Determination, which provided the factors the CDF had to consider when deciding whether to grant additional carer's leave to a member. The provision is moved to subsection 5.9.12.4 of the Principal Determination, consequential upon section 7 of this Determination.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the Defence Regulation 2016. Also, a person may make a complaint to the Defence Force Ombudsman.

Consultation

Navy, Army and Air Force have been consulted in the development of the 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

Defence Determination, Conditions of service Amendment (ADF Retention – Carer’s leave) Determination 2019 (No. 28)

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

The purpose of this Determination is to extend the carer’s leave benefit to allow a member to care for close relatives that do not necessarily live with the member.

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.

The protection of a person’s right to care for dependants

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

This Determination provides for a member of the Australian Defence Force the right to remuneration while they provide direct care and support for a close relative who is ill or injured. The benefit was formerly only provided to a member to care for dependants living with the member. Members may now be granted leave to care for extended family members who do not necessarily live with the member.

Conclusion

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

Kirk Marcel Lloyd, Acting Assistant Secretary People Policy and Employment Conditions