Defence Determination, Conditions of service Amendment (Leave for travel to restricted destinations) Determination 2019 (No. 27)

This Determination amends Defence Determination 2016/19, Conditions of service (the 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 set out the limits on granting leave to a member who wishes to take leave for the purpose of travelling to a restricted destination and to cancel the member’s leave if they travel to a restricted destination without approval. The limitations do not apply to members who are transiting through a restricted destination. Travel to restricted destinations by a member of the ADF on leave is limited as it poses significant safety and security threats to the member and Defence.

The amendments contemporise the Principal Determination without making changes to the underlying policy position.

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

Section 2 provides that this instrument commences on 3 October 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 1 amends section 1.3.68 of the Principal Determination, which defines the term ‘Restricted destination’. The amendment identifies the countries that are restricted destinations and includes a country, or a part of a country, that is identified by the Department of Foreign Affairs and Trade as a place not to travel. Members are able to identify these places by accessing the Department of Foreign Affairs and Trade’s Smartraveller website, at www.smartraveller.gov.au, which members will be advised of through the ADF’s Pay and Conditions Manual.

Section 2 amends section 5.0.2 of the Principal Determination which provides the contents of Chapter 5. The entry for Part 2 has been amended to reflect the change of the title of the Part made by section 3 of this Determination.

Section 3 omits and substitutes Chapter 5 Part 2 of the Principal Determination which provides the rules and process relating to the grant of leave for members wanting to travel to restricted destinations. The Part has been restructured and the relevant rules have been remade, removing processes that are not required to be made under section 58B of the Defence Act. The new structure and changes to the Part are as follows.

- Section 5.2.1 provides the objective of the Part. This has been amended to specify the purpose of the Part, for consistency across the Principal Determination and to better reflect the policy outcomes.
- Section 5.2.2 specifies the members to whom the Part will apply.
• Section 5.2.3 provides when a member is in transit through a restricted destination.

• Section 5.2.4 sets out restrictions to the grant of leave when a member wants to travel to a restricted destination. The section that previously provided this rule has been rewritten to remove the provision to grant a member leave if, during that period of leave, the member intends on travelling to a restricted destination without permission, other than while in transit. The grant of permission is an exercise of command power and is not included in this Determination. Members will be advised of the process to obtain permission in guidance material published on the Department’s website.

• Section 5.2.5 sets the rule to cease a member’s leave if the member has been granted leave and subsequently travels to a restricted destination without permission, other than while in transit. It also identifies exceptions to the cancellation of leave that are beyond the member’s control.

Consultation

Prior to making this Determination, the rule maker consulted with the Office of the Chief of the Defence Force and Joint Operations Command.

As this determination does not change extant policy, the rule maker was satisfied that 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

The purpose of this Determination is to set out the limits on granting leave to a member who wishes to take leave for the purpose of travelling to a restricted destination and to cancel the member’s leave if they travel to a restricted destination without approval. This does not apply to a member who is transiting through a restricted destination. Travel to restricted destinations by a member of the ADF on leave is limited as it poses significant safety and security threats to the member and Defence.

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.

Check freedom of movement

The protection of a person's right to freedom of movement engages Article 13 of the Universal Declaration of Human Rights. Article 13 guarantees a person's right to freedom of movement and residence within the borders of each state, the right to leave any country and to return to their own country.

Legitimate objective: This Determination promotes the safety and security of members who propose to take leave for the purpose of travelling to restricted destinations. Restricted destinations are countries, or parts of countries, which pose a high risk to members of the Australian Defence Force (ADF), ADF operations and to national security.

Reasonable, necessary and proportionate: This Determination promotes the safety and security of members of the ADF on leave by limiting their ability to take leave for the purpose of travelling to countries, or parts of countries, that are identified as being a high risk for Australians to travel. The nature of military service increase the risk to ADF members travelling in these countries. The increased risk to members of the ADF may have adverse effects on ADF operations and national security. This Determination does not prevent a members of the ADF from taking leave, which is provided as a condition of service.

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.

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