EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Regional rent Bands) Determination 2019 (No. 31)

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 (the 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 Chapter 7 of the Principal Determination which sets out provisions dealing with housing and meals for members of the Australian Defence Force.

This Determination omits references to regional rent bands in the Principal Determination and includes consequential amendments.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Regional rent bands amendments

Section 1 amends section 7.0.2 of the Principal Determination which provides the contents to Chapter 7. The section omits reference to Annex 7.B in the list of contents which is omitted by section 12 of this Determination.

Section 2 amends section 7.6.1 of the Principal Determination which provides an overview of Chapter 7 Part 6. The see notes are omitted as they are not legislative in nature and do not need to be determined. Omitting the see notes will aid the reader and make the section easier to understand.

Section 3 amends section 7.6.3 of the Principal Determination which defines certain terms used in the Part. The listed definitions are omitted for the following reasons.

- The term 'Rent band' is omitted as it is sufficiently defined in other sections in Chapter 7 Part 6.
- The term 'Rent range' is no longer required as Regional rent bands are omitted by section 12 of this Determination.

Section 4 amends subparagraph 7.6.4.1.b.i of the Principal Determination which provides conditions for a home to be a suitable Service residence. The legislative note has been amended for clarity. The see notes are omitted as they are not legislative in nature and do not need to be determined.

Section 5 omits and substitutes section 7.6.10 of the Principal Determination which details how a Service residence is given a market-rent based residence. Removing reference to regional rent bands and Annex 7.B required redrafting and restructure of this section.

Section 6 omits section 7.6.11 of the Principal Determination which provides that the rent bands for each location are located in Annex 7.B and provides a power to assign a temporary rent band when one does not exist for a location. The annex has been omitted by section 12 of this Determination. The CDF decision-making rule is combined with section 7.6.10 which is amended under section 5 of this Determination.

Section 7 amends subsection 7.6.13.1 of the Principal Determination which details the applicable rent band for a member's rank. The note is omitted as it references a subsection which is omitted by section 5 of this Determination.
Section 8 omits subsection 7.6.13.5 of the Principal Determination which provides that a member is taken to have been allocated a Service residence when the member meets the requirements of section 7.6.55. Section 7.6.55 has been omitted by section 11 of this Determination.

Section 9 omits and substitutes subsection 7.6.19.1 of the Principal Determination which details the classification of rent band choice accommodation. Removing reference to Annex 7.B has required redrafting of this subsection. The opportunity has been taken to simplify the rules and modernise the drafting style.

Section 10 amends subsection 7.6.19.2 of the Principal Determination which details the classification of rent band choice accommodation. The see note is being omitted as it refers to a definition which is omitted by section 3 of this Determination.

Section 11 omits section 7.6.55 of the Principal Determination which provides the member contribution for amenity-based or on-base residences. This section is omitted as there are no longer any serving members affected by this provision.

Section 12 omits Annex 7.B of the Principal Determination which details the dollar rent range for rent bands in regional locations. Regional rent bands were introduced into Defence Determination 2005/15, Conditions of Service, the former Principal Determination, in 2007 as part of the new Housing Classification Policy. This allowed members to see how Service residences were being classified according to the market rent at the posting location. The Annex is omitted as the classification of Service residences into rent bands within a particular rent range in locations is administrative in nature and is covered by the contractual arrangement between Defence and Defence Housing Australia.

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

Before this Determination was made, consultation was undertaken with the Directorate of Relocations and Housing and Defence Housing Australia. 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 (Regional rent Bands) Determination 2019 (No. 31)

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 omits references to regional rent bands in the Principal Determination and includes consequential amendments.

Human rights implications

Right to an adequate standard of living

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: ADF members are required to live in various posting locations throughout Australia which may require them to live in a variety of housing types, such as on a military base, in a Service residence or in rental accommodation. This could limit the standard of accommodation available to members. It could also cause a member to be separated from their family.

Reasonable, necessary and proportionate: Defence provides assistance with subsidised accommodation for a member and their family. Regional rent bands were introduced into Defence Determination 2005/15, Conditions of Service, the former Principal Determination, in 2007 as part of the new Housing Classification Policy. This allowed members to see how Service residences were being classified according to the market rent at the posting location rather than the previous amenity-based classification policy. The dollar range for determining the classification of a Service residence is administrative in nature and forms part of the contractual arrangement between Defence and Defence Housing Australia. No members will be affected by the removal of these provisions.

This Determination also protects this right by clarifying policy to assist people to better understand and apply benefits.

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