

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Additional Recreation Leave) Determination 2019 (No. 32)

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* (Legislation Act). These instruments are also subject to the interpretation principles in the AIA Act.

For the purpose of adopting Defence Force Remuneration Tribunal (DFRT) determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act.

This Determination amends Chapter 5 of the Principal Determination which sets out provisions dealing with leave for members of the Australian Defence Force (ADF).

The purpose of this Determination is to change the eligibility criteria for certain types of additional recreation leave, which is provided in Chapter 5 Part 4 of the Principal Determination. The amendment reinstates a limitation, which was omitted as an administrative oversight, on eligibility that was in force immediately before the commencement of *Defence Determination, Conditions of Service Amendment (Flexible Service Determination) Determination 2018 (No. 15)* on 29 November 2018. The reinstatement of the limitation on eligibility for additional recreation leave has no detrimental effect on a member's leave credits accrued.

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

Section 2 provides that this instrument commences on 12 December 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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—Additional recreation leave amendments

Section 1 omits and substitutes subsection 5.4.15.2 of the Principal Determination, which details the conditions a member undertaking flying duties must satisfy to be eligible to receive the additional recreation leave and how the leave is calculated. This Determination remakes the rule in a similar manner with the inclusion of a limitation: only members eligible for flying disability allowance under table item 1 in section B.7.8 of DFRT Determination No. 11 of 2013, *ADF Allowances*, are eligible to receive additional recreation leave at the specified rate.

Section 2 amends subsection 5.4.15.3 of the Principal Determination, which provides the calculation for additional recreation leave credits for a member who receives the annual rate of flying disability allowance. The amendment is technical in nature, providing consistency and clarity.

Section 3 amends subsection 5.4.16.3 of the Principal Determination, which details the conditions a member undertaking special service must satisfy to be eligible to receive the additional recreation leave and how the leave is calculated. This Determination includes a limitation on members receiving Special Forces disability allowance: only members eligible for Special Forces disability allowance under certain items specified in subsection 5.4.16.4 of the Principal Determination are eligible to receive additional recreation leave at the specified rate. The amendment does not change the eligibility criteria for additional recreation leave for a member who receives clearance diver allowance.

Section 4 inserts after subsection 5.4.16.3 of the Principal Determination a new subsection for the purpose of subsection 5.4.16.3. The subsection identifies members who are eligible for additional recreation leave under subsection 5.4.16.3 as being a member who is eligible for Special Forces disability

allowance under any item between table item 1 and item 9 or table item 14 at section B.12.7 of DFRT Determination No. 11 of 2013, *ADF Allowances*.

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 Army in relation to this 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

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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 change the eligibility criteria for certain types of additional recreation leave, which is provided in Chapter 5 Part 4 of the Principal Determination. The amendment reinstates a limitation on eligibility that was in force immediately before the commencement of *Defence Determination, Conditions of Service Amendment (Flexible Service Determination) Determination 2018 (No. 15)* on 29 November 2018.

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.

Legitimate objective: Defence Determination 2016/19, Conditions of service, provides additional recreation leave to certain members of the ADF in recognition of the effects of service over time specific circumstances. This Determination adjusts the eligibility criteria for some types of additional recreation leave, limiting it to ADF members in specific circumstances.

Reasonable, necessary and proportionate: The limitation being implemented by this Determination recognises that not all members who are currently eligible for additional recreation leave experience the same effects of service and adjusts eligibility for additional recreation leave to provide an equitable outcome for ADF members.

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.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions