EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 16)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination) made under section 58B of the Defence Act 1903 and in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (AI 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 AI Act.

This Determination amends the following chapters of the Principal Determination:

- Chapter 12 of the Principal Determination sets out provisions dealing with overseas conditions of service for members of the Australian Defence Force (ADF).
- Chapter 14 of the Principal Determination sets out provisions dealing with relocating to or from long-term posting overseas for members of the ADF.
- Chapter 14A of the Principal Determination sets out provisions dealing with evacuations from overseas locations for members of the ADF.
- Chapter 15 of the Principal Determination sets out provisions dealing with living and working on long-term posting overseas for members of the ADF.
- Chapter 16 of the Principal Determination sets out provisions dealing with overseas hardship locations for members of the ADF.

The purpose of this Determination is to amend the Principal Determination to expand certain benefits that have been provided in response to the COVID-19 pandemic and to provide additional benefits to meet the ongoing needs to the ADF workforce during this period. Changes includes the following:

- Broadening the availability of payments for the cost of isolation periods and making the payment of meals supplementary allowance more available to members and their families.
- Making accommodation available during transit locations for members returning to overseas posting locations due to the inability to get connecting flights in close proximity to each other.
- Providing for the reasonable costs of hire of furniture and household items for those who are temporarily living in their own homes during evacuation periods while their furniture and household items are in storage.
- Enabling members who are posted to specific locations overseas to travel to an Australian capital city, rather than a determined relief leave centre or regional leave centre, due to health and safety concerns relating to COVID-19.
- Providing an alternative benefit for members whose children were to attend an approved summer school or summer camp that has been closed as a consequence of COVID-19 restrictions.

The amendments made by this Determination generally reflect those provided by the Department of Foreign Affairs, which has led the Whole of Government response in relation to Australian Government officials posted overseas, to their employees.

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

Section 2 provides that this instrument commences on 6 August 2020.

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—Cost of isolation amendments

Section 1 inserts after a section 12.3.7 of the Principal Determination a new definition for ‘Isolation period’. This amendment is made consequential to other amendments being made by this Determination.

Section 2 inserts after section 12.3.16 of the Principal Determination a new definition for ‘Required to isolate’. This amendment is made consequential to other amendments being made by this Determination.

Section 3 inserts after Chapter 12 Part 4 of the Principal Determination a new part. Part 5 contains rules that apply to members and their dependants who receive international travel benefits under the Principal Determination and are required to undertake a period of isolating in specified accommodation; this may also be known as quarantine. Part 5 broadens and consolidates rules that were previously only provided in connection with evacuation from a posting location in Chapter 14A of the Principal Determination. Specifically, Part 5 provides the following:

- Section 12.5.1 provides the purpose of the Part.
- Section 12.5.2 specifies who may receive a benefit under this Part subject to eligibility criteria being satisfied.
- Section 12.5.3 specifies the eligibility criteria a person must satisfy in order to receive the cost of the isolation, which may be reimbursed to the member or paid to the service provider. The section also provides limits on the payment of the benefit; for example: the cost of the isolation will not be paid where the costs are paid by someone else or if the cost would have normally been associated with the accommodation for which they pay rent.
- Section 12.5.4 provides a member with the reasonable cost of alternative accommodation if the member’s dependant, but not the member, is required to isolate and do so in the member’s home. This allows for the member to occupy temporary accommodation during the dependant’s isolation period.
- Section 12.5.5 provides meal supplement allowance that was provided at section 14A.1.8 of the Principal Determination before the commencement of this Determination. This section also expands the eligibility of meal supplement allowance to include people who are required to isolate outside of Australia or received a benefit under section 12.5.4. Specific rates are also provided for overseas locations by way of reference to overseas meal allowance that exist in the Principal Determination, as in force from time to time. These rates are the same that would be paid if the member was occupying temporary accommodation.

Schedule 2—COVID-19 evacuations (Return to post) amendments

Section 1 amends section 14A.1.3 of the Principal Determination which specifies whom Chapter 14A of the Principal Determination applies. The amendment removes the requirement for the CDF to make the decision to evacuate ADF members from an overseas location. This decision point is remade in section 2 of this Schedule.

Section 2 amends section 14A.1.4 of the Principal Determination which makes provisions for evacuation flights from a location overseas to Australia. The amendment inserts decision point into subsection 1 that requires the CDF to require or permit a person to evacuate from the location. This is made as a consequence of section 1 of this Schedule.

Section 3, 4, and 5 amends section 14A.1.5 which provides for flights from Australia back to a location overseas at the end of the evacuation period. Section 3 expands the availability of return flights to people who were not evacuated to include people who had temporarily left the posting location but were unable to return as a consequence of the COVID-19 pandemic. Sections 4 and 5 remove the requirement for the CDF to decide that it is safe for members and their families to return to the location. This is to promote greater flexibility and will be managed through the exercise of command power under the Defence Act.

Section 6 amends section 14A.1.6A of the Principal Determination which provides transit accommodation for people travelling to or from Australia. The amendment expands the benefit to enable the person to receive transit accommodation in any location during their journey other than in their final destination. This is as a consequence of the reduced number of flights available, which has increased transit times between connecting flights.
Sections 7 and 8 amend section 14A.1.7 of the Principal Determination which provides people who have been evacuated with accommodation in Australia. Section 7 inserts a note to reference additional benefits that, as a consequence of this Determination, are provided in Chapter 12 Part 5 of the Principal Determination. Section 8 omits subsection 4 as it no longer has any affect due to the passage of time.

Section 9 amends section 14A.1.8 of the Principal Determination which provides meal supplementary allowance. The amendment omits the section as it is remade by Schedule 1 of this Determination in Chapter 12 Part 5 of the Principal Determination.

Section 10 inserts a new section after section 14A.1.11 of the Principal Determination. The new section makes provisions for the members to receive the cost for the hire of necessary furniture and household items if they were evacuated from an overseas location and live in their own home in Australia. The benefit only applies if their furniture and household items were put into storage before they left Australia.

Schedule 3—Summer schools and assisted leave travel Amendments

Sections 1 and 2 amends section 15.6.15 which provides benefits available to members who send their children to approved summer schools or summer camps in their posting location. The amendment is in response to many of the approved summer schools and camps being closed as a consequence of the COVID-19 pandemic. The new provisions enable a member to receive $135 per day towards the cost of their child attending an alternative summer school or summer camp that is not approved under the Principal Determination. This benefit does not apply to summer camps in the United States of America and the benefit is limited by subsection 2, which is remade by section 5 of this Schedule.

Section 3 amends section 16.1.2 of the Principal Determination which provides definitions used in Chapter 16 of the Principal Determination. The amendment contemporises the drafting style and amends the definitions of ‘regional leave centre’ and ‘relief leave centre’. Both have been amended to include an Australian capital city during the COVID-19 pandemic unless the leave centre is in the same country as the posting location.

Section 4 amends section 16.4.5 of the Principal Determination which provides for assisted leave travel. The amendment clarifies that assisted leave travel is to a regional leave centre or relief leave centre and amends the class of travel for flights going to and leaving Kabul, Afghanistan.

Sections 5 and 6 amends section 16.4.11 of the Principal Determination which permits a member to offset assisted leave travel benefits to travel to another location. The amendments clarify the consequences of offsetting an assisted leave travel benefit and provides that when determining the value of the offset the regional leave centre or relief leave centre that is not Australia is to be used.

Schedule 4—Consequential amendments

Section 1 omits the definition of ‘Isolation period’ from section 14A.1.2 of the Principal Determination, as a consequence of the phrase being remade by section 1 of Schedule 1.

Section 2 amends a cross-reference in section 14A.1.12 of the Principal Determination as a consequence of meal supplement allowance being remade by section 3 of Schedule 1.

Section 3 omits the definition of ‘Isolation period’ from section 14A.2.2 of the Principal Determination, as a consequence of the phrase being remade by section 1 of Schedule 1.

Sections 4 and 5 omit the definition of ‘Required to Isolate themselves’ from section 14A.2.2 and 15.1.2 of the Principal Determination, as a consequence of the phrase being remade by section 2 of Schedule 1.

This Determination provides for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions made under the Principal Determination 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 Department of Foreign Affairs and Trade and the Directorate of Attaché and Overseas Management in the Strategic Policy and Intelligence Group in the Department of Defence.

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 (COVID-19 response) Determination 2020 (No. 16)

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 amend the Defence Determination 2016/19, Conditions of service (the Principal Determination) to expand certain benefits that have been provided in response to the COVID-19 pandemic and to provide additional benefits to meet the ongoing needs to the ADF workforce during this period. Changes includes the following:

- broadening the availability of payments for the cost of isolation periods and making the payment of meals supplementary allowance more available to members and their families.
- making accommodation during transit locations for members returning to overseas posting locations due to the inability to get connecting flights in close proximity to each other.
- Providing for the reasonable costs of hire of furniture and household items for those who are temporarily living in their own homes during evacuation periods while their furniture and household items are in storage.
- Enabling member who are posted to specific locations overseas to travel to an Australian capital city, rather than a determined relief leave centre or regional leave centre, due to health and safety concerns relating to COVID-19.
- Providing an alternative benefit for members whose children were to attend an approved summer school or summer camp that has been closed as a consequence of COVID-19 restrictions.

Human rights implications

Right to the enjoyment of just and favourable conditions of work

The protection of a person’s right to just and favourable conditions of work 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.

This Determination promotes just and favourable work conditions by making provision that ensure the member does not incur additional expenses as a result of having for activities relating to their duty. The Determination provides benefits to cover the costs for isolation and provides meals benefits for those periods, as well as accommodation during periods the member and their dependants are travelling and are required to stay in the transit location overnight. In addition, the Determination provides members and their families with a benefit to cover the cost of the hire of necessary furniture and household items if they have been evacuated from overseas under the Principal Determination and are living in their own home in Australia.

Right of the child to education

The protection of child’s right to education engages Article 28 of the Convention of the Rights of the Child.

This Determination recognises the right of the child to education by providing financial assistance for children to attend alternative summer schools or camps if the approved schools are closed due to COVID-19.
Conclusion

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions