

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment (Assisted leave travel) Determination 2021 (No. 8)

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 Chapter 16 of the Principal Determination which sets out provisions dealing with overseas hardship locations for members of the Australian Defence Force (ADF).

The purpose of this Determination is to enable members on long-term posting overseas to use existing assisted leave travel benefit within their country of posting. This amendment provides ADF personnel and their dependants with additional options to seek relief and respite from their posting location during COVID-19 restrictions. This amendment ensures Defence is aligned with the Department of Foreign Affairs and Trade as the lead in the Whole-of-Government approach to the COVID-19 pandemic.

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

Section 2 provides that this instrument commences on 10 June 2021.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 inserts the definition of in-country into section 16.1.2 of the Principal Determination, which provides the definitions that apply to Chapter 16.

Section 2 amends section 16.4.7 of the Principal determination, which provides the number of assisted leave travel trips a member is eligible to receive. The section inserts a subsection which provides that the number of trips a member is eligible for is reduced by 1 for each trip a member is permitted to offset under section 16.4.11 of the Principal Determination.

Section 3 omits and substitutes section 16.4.11 of the Principal Determination, which provides when a member may be eligible to offset an assisted leave travel trip to travel to a location in another country, or a location within the member's country of posting.

- Subsection 1 provides when the CDF may permit a member to offset their assisted leave travel. The subsection has been amended to include travel to a location within the member's country of posting.
- Subsection 2 provides what the CDF must consider when permitting a member to offset their assisted leave travel to travel to a location in another country, or a location within the member's country of posting.
- Subsection 3 provides what a member is eligible to receive if they are permitted to offset their assisted leave travel to travel to another country.
- Subsection 4 provides what a member is eligible to receive if, during the COVID-19 pandemic, they are permitted to offset their assisted leave travel to travel to location within their country of posting.
- Subsection 5 provides how the value of the travel under subsection 3 and 4 is to be determined.

Section 4 substitutes section 16.4.12 of the Principal Determination, which provides when a member must provide proof of travel and what may be accepted as documentary evidence. The section has been amended to include proof of travel relating to travel to a location within the member's country of posting.

#### Schedule 2—Transitional provisions

Section 1 provides definitions that apply to Schedule 2 of this Determination.

Section 2 provides transitional arrangements for offsetting assisted leave travel between 26 February 2021 and the commencement of this Determination. Applying these transitional arrangements from 26 February 2021 ensures Defence is aligned with the Department of Foreign Affairs and Trade as the lead in the Whole-of-Government approach to the COVID-19 pandemic.

- Subsection 1 provides who the section applies to.
- Subsection 2 provides what a member is eligible to receive if a decision maker is satisfied that, the member travelled to a location within their country of posting; and that travel to that location met the purpose of assisted leave travel.
- Subsection 3 provides that a member must prove that they and their dependants travelled to a location within their country of posting and that the member must provide documentary evidence of the travel.
- Subsection 4 provides that if a member is eligible for return transport costs under subsection 2 and the member travelled by private vehicle, section 16.4.15 of the Principal Determination applies. Section 16.4.15 of the Principal Determination provides how to work out the cost of travel by private vehicle.
- Subsection 5 provides that the number of assisted leave travel trips a member is eligible for under the Principal Determination is reduced by 1 for each benefit paid to the member under Schedule 2 of this determination.

#### **Consultation**

Before this Determination was made, internal consultation was undertaken with the Defence COVID-19 taskforce, Defence groups and Navy, Army and Air Force, and Senior Defence Representatives at Overseas Posts. External consultation was undertaken with the Department of Foreign Affairs and Trade.

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 (Assisted leave travel) Determination 2021 (No. 8)***

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 provide members on long-term posting overseas to use the existing assisted leave travel benefit within their country of posting. This amendment allows ADF personnel and their dependants with additional options to seek relief and respite from their post location during COVID-19 restrictions.

This amendment also ensures defence is aligned with the Department of Foreign Affairs and Trade as the lead in the Whole-of-Government approach to the COVID-19 pandemic.

### **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.

#### *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.

In response to the relaxation of limitations imposed by the Department of Foreign Affairs and Trade in response to the COVID-19 pandemic, this Determination ensures that members on long-term posting overseas are able to use existing assisted leave travel benefits to seek relief and respite from their posting location by travelling within their country of posting during COVID-19 restrictions..

### **Conclusion**

This Determination is compatible with human rights because, to the extent that it engages with human rights, it advances their protection.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions