

EXPLANATORY STATEMENT

Defence Determination, Conditions of service (COVID-19 response – overseas) Amendment Determination 2021 (No. 21)

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

This Determination amends the Principal Determination which provides benefits for members of the Australian Defence Force (ADF) and their families as part of the member's conditions of service. The Principal Determination provides a range of benefits that recognise the unique nature of military service and the obligation and limitations that military service places on members and their families. Members undertake service in both the domestic and overseas environments, including on deployments. Specific benefits are provided for each environment.

Purpose

The Purpose of this Determination is to provide bespoke benefits as a consequence of the COVID-19 pandemic for members on duty overseas who are returning to Australia and their pets.

Operational Details

Details of the operation of the Determination are provided at annex A.

Retrospective application

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person

Human rights compatibility

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

Review options

Decisions that are made under the Principal Determination, as amended by this 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, the following consultation was undertaken:

- Schedule 1 and 3: Defence COVID-19 Task Force; the Directorate of Relocation and Housing in the Estate and Infrastructure Group; Defence Travel Policy in the Defence Finance Group, and the Directorate of Overseas and Attaché Management in International Policy Division.
- Schedule 2 and 4: The office of the Chief of the Defence Force, Army, Navy, Air Force and Overseas Administration Team in the Defence People Group.

The rule maker was satisfied that the changes made by this Schedule are technical in nature and external consultation was not required.

Approved by:

Fiona Louise McSpeerin
Assistant Secretary
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

***Defence Determination, Conditions of service (COVID-19 response – overseas) Amendment
Determination 2021 (No. 21)***

Operational details

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

Section 2 provides that this determination commences on 14 October 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—Quarantine housing amendments

Section 1 inserts section 1.3.62 into the Principal Determination which provides that “quarantine residence” means a residence or other form of accommodation provided for the purpose of undertaking an isolation period. This also includes a quarantine period.

Section 2 omits and substitutes section 12.1.1 of the Principal Determination which provides who chapters 12 to 16 of the Principal Determination applies to. The section has been amended to include the periods when it applies, which includes:

- For the purpose of commencing duty overseas, the period immediately before commencing duty overseas for the purpose doing all things necessary to travel to the overseas location.
- During the COVID-19 pandemic, the later of either the period ending when the member returns to their posting location in Australia or if the member returns to their posting location and is required to isolate, the period ending when the member’s isolation period ends.

Section 3 amends section 12.5.3 of the Principal Determination which provides a member with the payment of costs associated with a requirement to isolate. Reference to “who meets all of the following” has been omitted to improve readability.

Section 4 inserts section 12.5.4A into the Principal Determination. The section applies to a member, or a dependant of a member, who is required to isolate on return to Australia at the end of a period of overseas duty. The section provides accommodation in a quarantine residence in Australia during a period of isolation or quarantine. The section further provides that if a member and their dependant are both eligible for quarantine residence at the same time, they are to share the same quarantine residence.

Section 5 omits and substitutes section 12.5.5 of the Principal Determination which provides meal supplement allowance for a person who is required to isolate and provided the cost of accommodation under section 12.5.3 or are occupying accommodation provided under section 12.5.4 of the Principal Determination. The section has been redrafted, removing references to members and their dependants in Australia, who are provided for in the new section 12.5.7. The heading of the section has also been amended to clarify that it applies to a person who is outside Australia.

Section 5 also inserts sections 12.5.6 and 12.5.7 into the Principal Determination which provide the following:

- Section 12.5.6 provides incidentals for a member to whom section 12.5.5 applies and is on short-term duty overseas. The rate of the incidentals payment is the amount payable to a member who would receive the ‘other country’ rate specified in Annex 13.3.A Part 2.
- Section 12.5.7 provides meal supplement allowance for a person who is in Australia and eligible for accommodation under section 12.5.14A. Meal supplement includes an amount payable for meals and, for members, an amount payable for incidental expenses. The rates of these benefits are consistent with other payments for meals and incidentals payable in Australia.

Schedule 2—Overseas pet relocation amendments

Section 1 inserts a note into subsection 14.3.6.1 of the Principal Determination which provides that a member may be reimbursed for pet transportation, both to and from an overseas posting location. The note provides that relocation of pets within Australia is provided under Chapter 6 Part 1 Division 3 of the Principal Determination. This is made as a consequence of changes made by section 2 of this Schedule.

Section 2 omits and substitutes subsection 14.3.6.5 of the Principal Determination which provides that section 14.3.6 does not apply to pets relocated within Australia in connection with a long-term posting. The subsection has been remade to provide that a member is not eligible for pet relocation under this section if they are eligible to receive a pet relocation under section 14.3.6A of the Principal Determination.

Section 2 also inserts section 14.3.6A into the Principal Determination which provides pet relocation assistance during the COVID-19 pandemic for a member whose pet was relocated to a their posting location in connection with them starting a long-term posting overseas. The section provides a member with an increased rate of pet relocation assistance in recognition of the increased costs of international pet relocations as a consequence of the COVID-19 pandemic. A formula which is to be used to calculate the amount a member is eligible to receive, which must not be more than 4 times the original costs of relocating the pet. Subsection 3 also specifies what is and is not included when calculating the cost of a pet relocation.

Schedule 3—Transitional provisions – quarantine housing

Section 1 provides definitions which apply to Schedule 3 of this Determination, and includes definitions for “Defence Determination”, “isolation period” and “required to isolate”.

Section 2 provides that the Schedule applies to a person who would have been eligible for a benefit under the Principal Determination, as amended by Schedule 1 of this Determination, had it been in force between 31 August 2021 and the commencement of this Determination.

Section 3 provides that if a person would have been eligible to occupy a quarantine residence under section 12.5.4A which was inserted by section 4 of Schedule 1 of this Determination and they incurred a cost for occupying accommodation provided for the purpose of requiring to isolate, the member is eligible for the cost of that accommodation for the isolation period. However, if the member received a payment under the Principal Determination for occupying accommodation provided for the purpose of completing an isolation period, the member is not eligible for a payment under Schedule 1 for the same period.

Section 4 provides that if a member would have been eligible for meal supplement allowance under section 12.5.7 which was inserted by section 5 of Schedule 1 of this Determination, the member is eligible for the amount of supplement allowance they would have received had Schedule 1 applied. However, if the member received an allowance for meals and incidentals under the Principal Determination for a period of isolation to which section 12.5.7 would apply, the amount payable to the member under subsection 4.1 is reduced by the amount they have received.

Schedule 4—Transitional provisions – overseas pet relocations

Section 1 provides that reference to Defence Determination in this Schedule means *Defence Determination 2016/19, Conditions of service*.

Section 2 provides that Schedule 4 applies to a member who was on a long-term overseas posting on or after 19 March 2020 and before the commencement of this Determination who received a benefit for a pet relocation under section 14.3.6 of the Principal Determination, as in force at the end of their posting. The section also provides a formula which is to be used to calculate the amount a member is eligible to receive for additional pet relocation assistance.

**Defence Determination, Conditions of service (COVID-19 response – overseas) Amendment
Determination 2021 (No. 21)**

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Overview of the Determination

The Purpose of this Determination is to provide bespoke benefits as a consequence of the COVID-19 pandemic for members on duty overseas who are returning to Australia.

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.

Assessment of compatibility

This Determination is compatible with human rights it provides accommodation, meals and incidentals for members and their dependants who are required to isolate when they return to Australia from undertaking duty overseas. This determination also provides pet relocation costs for members who, during the COVID-19 pandemic, need to relocate their pet from their overseas posting location.

Conclusion

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.