

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2021 (No. 19)

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:

- Extend career transition support benefits which are currently provided to members of the Permanent Force or members of the Reserves on continuous full-time service to the remainder of the Reserves cohort. Career transition support services assist members with training and financial advice in preparation for civilian life when they change service category or cease service with the ADF.
- Extend the end date of the Army dental officer professional development scheme to 30 June 2023.
- Amend the domestic evacuation assistance provisions to better reflect community standards and provide greater flexibility for accommodating members and their families during an evacuation, including giving priority to the use of evacuation centres.

Operational Details

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

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: Defence Member and Family Support.

Schedules 2 and 4: Director General Army People Capability

Schedule 3: Navy, Army, Air Force and the Directorate of Removals and Housing

The decision maker was satisfied that further consultation was not necessary.

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 Amendment Determination 2021 (No. 19)**Operational details**

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

Section 2 provides the 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—Career transition amendments

Section 1 omits and substitutes section 2.2.1 of the Principal Determination which provides the purpose of Chapter 2 Part 2. The Part provides career transition support benefits for members when they change service category or cease service with the ADF. The redraft purpose statement now includes members of the Reserves who are not on continuous full-time service, which reflects the changes which have been made by this Schedule.

Section 2 amends section 2.2.2 of the Principal Determination which provides definitions used within Chapter 2 Part 2. The definition of member has been inserted, and provides that any reference to member includes a former member of the ADF.

Section 3 omits and substitutes section 2.2.3 of the Principal Determination which provides who the Part applies to. Previously the Part applied to members of the Permanent Force and members of the Reserves on continuous full-time service. The section has been amended to include members of the Reserves who are not on continuous full-time service.

Section 4 omits and substitutes section 2.2.5 of the Principal Determination which provides career transition training benefits. The section has been amended to include a definition of career transition training which provides the cumulative lifetime benefit a member is eligible to receive. The section has also been amended to include that career transition training provided under this section cannot occur during a period the member is on duty and undertaking Reserve service. Note 2 which was previously provided under subsection 2.2.5.1 has been omitted as it is non-legislative and administrative in nature.

Section 5 omits and substitutes section 2.2.6 of the Principal Determination which provides members assistance for professional financial advice. The section has been amended to include a definition of professional financial advice which provides the cumulative lifetime benefit a member is eligible to receive.

Section 6 omits and substitutes subsection 2.2.7.1 of the Principal Determination which provides travel and accommodation for a member who is attending a career transition activity, or an ADF Member and Family transition seminar. The subsection has been amended to provide that travel and accommodation will only be provided for career transition activities which have been approved under section 2.2.5. The note previously provided under subsection 2.2.7.1 has been omitted as it is non-legislative and administrative in nature.

Section 7 omits and substitutes section 2.2.8 of the Principal Determination which provides 23 approved absence days for a member to attend Defence Force transition program activities, employment related activities, career transition training or education courses and transition related administrative activities. The section has been amended to provide the following.

- Approved absence days under section 2.2.8 only apply to members of the Permanent Forces and member of the Reserves on continuous full-time service.
- Approved absence days may only be taken if a decision maker is satisfied that service requirements can be met while the member is absent.
- Approved absences days must not exceed a cumulative lifetime total of 23 days.

- A definition of decision-maker, which provides who can approve approved absence days under the section.

Previously subsection 2.2.8.2 provided two legislative notes, these notes have been omitted as they are non-legislative and administrative in nature.

Schedule 2—Army dental officer amendments

Section 1 amends subsection 4.8.29.2 of the Principal Determination which provides that the Army dental officer professional development scheme provided in Chapter 4 Part 8 Division 6 ceases to apply to all members on 30 June 2020. The cessation date has been extended until to 30 June 2023 to continue to assist Army dental officers to participate in professional development activities. This extension will also assist in the retention of qualified dental officers in the Army.

Schedule 3—Evacuation Assistance amendments

Section 1 amends subsection 7.11.3.2 of the Principal Determination which specifies when an evacuation order ends. The amendment does the following:

- Modifies the end date of an evacuation order in cases when the date is not set in the order to allow the Senior ADF Officer at the establishment to set a date.
- Inserts a new paragraph to end the evacuation order for members who had occupied a Service residence on the establishment before the evacuation order was issued. It ends the evacuation order with respect to the member on the day the member becomes eligible for temporary accommodation allowance and is able to occupy accommodation under Chapter 7 Part 5 of the Principal Determination. The effect of the paragraph is to enable a member and their family to receive temporary accommodation allowance at the earliest opportunity if they are unable to return to the Service residence because it is destroyed, or otherwise no longer habitable as a consequence of the disaster.

Section 2 omits and substitutes section 7.11.4 of the Principal Determination, which provides accommodation assistance for members and their dependants who live on an establishment, either in a Service Residence or living-in accommodation. The amendment prioritised members and their families evacuated from their accommodation to reside in evacuation centres before they can occupy other accommodation.

Members and their families will become eligible for other accommodation if the evacuation centre is full, other living-in accommodation is made available for the member to occupy or in special circumstances. Special circumstances may include a family member having special needs that cannot be accommodated at the evacuation centre. Once they become eligible for other accommodation, the member and their family may be accommodated under the other rules provided in the Principal Determination.

A definition of accommodation is also provided and includes types of accommodation that would not normally be provided to members and their dependants, such as shared accommodation for members occupying living in accommodation. When considering the type of accommodation, the availability of accommodation and the nature of the emergency need to be considered.

Schedule 4—Transitional provisions

Section 1 provides a transitional benefit for Army dental officers who would have been eligible for the Army dental officer professional development scheme provided in Chapter 4 Part 8 Division 6 of the Principal Determination between 30 June 2020 and the commencement of this Determination. The member is eligible for the reimbursement of the costs of professional development activities up to the maximum set out under section 4.8.32 of the Principal Determination.

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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 do the following:

- Extend career transition support benefits which are currently provided to members of the Permanent Force or members of the Reserves on continuous full-time service to the remainder of the Reserves cohort. Career transition support services assist members with training and financial advice in preparation for civilian life when they change service category or cease service with the ADF.
- Extend the end date of the Army dental officer professional development scheme to 30 June 2023.
- Amend the domestic evacuation assistance provisions to better reflect community standards and provide greater flexibility for accommodating members and their families during an evacuation, including giving priority to the use of evacuation centres.

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

Schedule 1 of this Determination Schedule 1 is compatible with human rights as it provides career transition benefits for members to assist them with training and financial advice in preparation for civilian life when they change service category or cease service with the ADF.

Schedule 2 and Schedule 4 of this Determination is compatible with human rights as it promotes just and favourable conditions of work by ensuring that Army dental officers are assisted with the costs associated with professional development activities.

Schedule 3 of this Determination is compatible with human rights as it provides members and their families with accommodation in emergency situations as a part of the member's conditions of service package. While the standard of accommodation may be less than what the member would normally be eligible for, the approach is consistent with community standards and appropriate for emergency situations.

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*.