

EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Benchmark schools and approved summer schools) Determination 2018 (No. 33)

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*. These instruments are also subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act.

This Determination amends Chapter 15 of the Principal Determination which sets out provisions dealing with living and working on long-term posting overseas for members of the Australian Defence Force (ADF).

This Determination has the following purposes.

- It provides a new definition of **posting location** for benchmark schools and approved summer schools.
- It amends the benchmark school for Cherbourg, France.
- It provides a new benchmark school for Hamburg, Germany.
- It clarifies that education assistance benefits for summer schools, or summer camps, are intended to provide members with an equal amount of school holidays as if the children were still in Australia.
- It amends the approved summer schools for Cambodia, China, Philippines and Cherbourg (France).
- It removes the approved summer school for Pakistan.
- It provides a transitional provision for members who were on a long-term overseas posting to Cambodia, China, Philippines or Cherbourg between 29 May 2018 and the commencement of this Determination to allow eligible members to be reimbursed for summer school fees.

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

Section 2 provides that this instrument commences on 9 August 2018.

Section 3 provides that this instrument has authority under section 58B of the *Defence Act 1903*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 amends section 15.6.4 of the Principal Determination, which provides definitions for terms that are used within Chapter 15 Part 6. A new definition for **posting location** has been included for the purpose of benchmark schools and approved summer schools. A benchmark school or approved summer school may be provided for a specific location where a member is posted overseas, the country where the member's posting location is located, or there may be a number of schools for specific locations in a country. The new definition sets out which location, city or country, is to be used as the members **posting location** for benchmark schools and approved summer schools.

Schedule 2 sets out amendments to benchmark schools.

Sections 1 to 4 amend Annex 15.6.A of the Principal Determination, which provides the benchmark schools for overseas posting locations.

Section 1 amends item 8 of the Annex which lists the benchmark schools for France. The benchmark school for Cherbourg has been changed to the Ermitage International School of France. This change in school will allow the member's the flexibility to either continue the children's education at their current school, move the children to a private school which will allow outside assistance such as tutors, or move the children to Ermitage International School of France which has an English speaking program for students.

Section 2 amends item 9 of the Annex which lists the benchmark schools for Germany. A new benchmark school, The International School of Hamburg, has been included for Hamburg, Germany. This new location has been included in anticipation of ADF members being posted to Hamburg on the commencement of the Land400 Project.

Sections 3 and 4 amend items 17 and 36 of the Annex which list the benchmark schools for Malaysia and the USA, respectively. These items are being amended to substitute the term 'elsewhere' to 'other'. This will ensure that the new definition of 'Posting location' inserted by schedule 1 will work for these locations.

Schedule 3 sets out amendments to approved summer schools.

Section 1 omits and substitutes section 15.6.15 of the Principal Determination, which provides the reimbursement of costs for a member's dependent child who attends an approved summer school. The section is being amended to provide that a member is eligible to be reimbursed an amount equal to the amount charged by a provider for the child's attendance at an approved summer school, or summer camp, listed at Annex 15.6.B for the member's posting location. The benefit is payable once per year – for a maximum of three weeks if the member is in France or for a maximum of four weeks if the member is located elsewhere. Education assistance benefits for summer school costs are intended to provide members with an equal amount of school holidays as if the children were still in Australia. The entire section is replaced to provide clarity for the reader.

This section is clarified to provide that additional costs incurred by a member, which relate to their child's attendance at summer school, are not reimbursable. Such items include travel related costs, extra optional activities, accommodation, meals and incidentals.

The former subsection 4 set out when a member would not be eligible for reimbursement under the section has been removed for the following reasons.

- Paragraphs a and d set out that the member would not be eligible for reimbursement if the dependent child was not eligible for education assistance under Division 2, or if the child attends school in Australia. Section 15.6.8 of Division 2 provides that a member is eligible for education assistance under the Division if a child who is a dependant attends school in the posting location. This means that a member who met the provisions set out in paragraph a or d would not be eligible for reimbursement of summer school costs as they do not meet the eligibility criteria under section 15.6.8.
- Paragraphs b and c set out that the member would not be eligible for reimbursement if there was no approved summer school or if the child attended a summer school that was not listed in Annex 15.6.B. Subsection 1 states that the member would only be eligible for reimbursement if the summer school is listed in Annex 15.6.B, therefore these provisions are not required.

The former subsection 5 set out when a member would be eligible for reimbursement of costs when a child who is a dependant attended the Enforex Day Camp Summer Camp in Spain. This section has been removed as approved summer camps listed in Annex 15.6.B have been included as eligible for reimbursement of costs under subsection 1.

Section 2 omits and substitutes the table in Annex 15.6.B of the Principal Determination, which lists the approved summer schools. The following schools have been added to the table:

- The Canadian International School, Cambodia.
- The International School of Phnom Penh, Cambodia.
- Canadian International School of Beijing, China.
- Atelier Art School, China.
- Imagine China, China.
- Sports Beijing, China.
- That's Mandarin, China.
- École Des Roches, Cherbourg.
- British School, Philippines.

The summer schools that have been removed are:

- American Employees Association (AEA) Summer Camp, China.
- TimeEdu Summer Program, China.
- Dulwich Community Program Summer School, China.
- Islamabad International School, Pakistan.
- Brent International School, Philippines.

The approved summer school of Islamabad International School, Pakistan, has been removed from Annex 15.6.B as Pakistan is designated as accompanied, spouse only, which means that a member is not eligible for Defence provided benefits for any children that accompany the member to Pakistan.

Schedule 4 provides a transitional provision for members who had a child attending an approved summer school.

Section 1 provides a transitional provision for members who were on a long-term overseas posting to Cambodia, China, Cherbourg (France) or the Philippines between 29 May 2018 and the commencement of this Determination. The transitional provision will allow a member to be reimbursed costs for their child attending a summer school for which the member has paid.

Consultation

The Defence Attaché Berlin and the Director Attaché and Overseas Management were consulted in the development of the changes in Schedule 1 of this Determination.

Navy, Army and Air Force were consulted in the development of the changes in Schedules 2 and 3 of this Determination.

The rulemaker 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

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This Determination has the following purposes.

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Human rights implications

The protection of a person's right to care for dependants

The protection of a person's right to care for dependants engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children. The approved summer school and education assistance provisions in this Determination advance the rights under Article 13 of the International Covenant on Economic, Social and Cultural Rights. Article 13 recognises the right of everyone to education.

Defence provides a range of benefits to members posted overseas to assist members and their families to not suffer a disadvantage because of the requirement for the member to live and work overseas. Summer schools are nominated to assist families during school holidays by assisting with the amount of education assistance to be reimbursed to members for their children's education whilst posted overseas. This Determination provides benchmark schools for Cherbourg, France and Hamburg, Germany, and approved summer schools for Cambodia, China, Cherbourg (France) and the Philippines.

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.

Jay Andrew Clarke, Acting Assistant Secretary People Policy and Employment Conditions