

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Compassionate travel and approved clubs) Determination 2019 (No. 15)

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.

Chapter 15 of the Principal Determination 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.

- To provide for a close relative of a member to visit the location of a member's spouse or partner who has a serious illness or very serious illness.
- To provide for a member or their spouse or partner to visit the location of a close relative who has a serious illness or very serious illness.
- To provide for a member, or their spouse or partner, to attend a funeral in another location.
- To make technical changes and to improve the clarity of Chapter 15 Part 3 Division 6 of the Principal Determination.
- To insert an approved club for Madrid, Spain.

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

Section 2 provides that this instrument commences on 13 June 2019.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Section 1 omits and substitutes item 1 of the table in section 1.3.72 of the Principal Determination which provided the meanings for serious illness. The item provides the meaning for compassionate leave under Chapter 5 Part 9 Division 2 and has been amended to provide the meaning for travel for compassionate leave under Chapter 15 Part 3 Division 6.

Section 2 omits the entry for 'Very seriously ill' from the table in section 15.3.31 of the Principal Determination. The phrase will no longer be used in the Division and has been replaced by the phrase 'very serious illness' which is already defined in Chapter 1 of the Principal Determination.

Section 3 omits the entry for 'Seriously ill' from the table in section 15.3.31 of the Principal Determination. The phrase will no longer be used in the Division and has been replaced by the phrase 'Serious illness' which is already defined in Chapter 1 of the Principal Determination.

Section 4 omits and substitutes section 15.3.32 of the Principal Determination, which specified who the Division applies to. The amended section 15.3.32 specifies to whom a benefit provided under the Division may be paid, being either the service provider or their agent, or the person who incurred the cost.

Section 5 omits and substitutes section 15.3.33 of the Principal Determination, which provides a close relative the reimbursement of costs of travel associated with visiting a person overseas who has a serious illness if approved by the CDF. The section has been amended to extend the benefit to a close relative who is to visit a person who has a serious illness and to clarify that the conditions must exist before the benefit can be provided. The amendment also requires the CDF to consider certain factors when determining whether the benefit should be paid. This removes the need for subsection 4, which dealt with who should receive the benefit.

Section 6 omits and substitutes section 15.3.34 of the Principal Determination. The section has been amended for clarity and the policy intent has not been changed.

Section 7 omits and substitutes section 15.3.35 of the Principal Determination, which provided benefits for a member and their spouse or partner to visit a close relative who is seriously ill or if they have died. The section has been amended to expand the benefit to include a close relative who has a serious illness. The section also provides the conditions for the member, or the member's spouse or partner, to have the cost of travel approved by the CDF as well as providing that the benefit may be approved on multiple occasions for the same close relative who continues to have a serious illness. The section also clarifies the amount of the benefit payable. If the close relative is in Australia, the benefit provided is the same as provided in sections 15.3.33 and 15.3.34. If the close relative is outside Australia, the benefit is the cost of travel that exceeds the costs of the allowable travel costs that would be incurred if the member were to travel from Sydney to the location of the close relative overseas. This provides parity with similar provisions for members in Australia who are required to travel overseas to visit a close relative who is seriously ill.

Schedule 2 – Approved club amendments

Section 1 amends the table provided at section 15.8.7 of the Principal Determination, which lists approved clubs for a member's location. Approved clubs are used for the provision of benefits under section 15.8.4 of the Principal Determination. The section inserts an approved club for Madrid, Spain.

Schedule 3 – Transitional provisions

Section 1 provides a transitional provision for a member who was posted overseas between 13 May 2018 and the commencement of this Determination. The transitional provision will provide for a member to be reimbursed the lesser of what they paid or the allowable travel cost for travelling overseas to visit a close relative who has or had a serious illness or very serious illness.

Section 2 provides a transitional provision for a member who was posted overseas between 13 May 2018 and the commencement of this Determination. The transitional provision will provide for a member to be reimbursed the lesser of what they paid or the allowable travel cost for travelling overseas to attend the funeral of a close relative.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system 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 Navy, Army and Air Force. Defence Community Organisation, the Overseas Administration Team and the Directorate of Attaché and Overseas Management were also consulted and agreed with the proposed changes. 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

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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

This Determination makes technical amendments to Defence Determination 2016/19, Conditions of service.

This Determination has the following purposes.

- To provide for a close relative of a member to visit the location of a member's spouse or partner who has a serious illness or very serious illness.
- To provide for a member or their spouse or partner to visit the location of a close relative who has a serious illness or very serious illness.
- To provide for a member, or their spouse or partner, to attend a funeral in another location.
- To make technical changes and to improve the clarity of Chapter 15 Part 3 Division 6 of the Principal Determination.
- To insert an approved club for Madrid, Spain.

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.

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.

Schedule 1 of this Determination provides for a member of the Australian Defence Force the right to remuneration by providing for a close relative of a member to visit a member's spouse or partner who has a serious illness or a very serious illness overseas. The Determination also provides for a member or their spouse or partner to visit a close relative overseas who has a serious illness or a very serious illness.

Transitional provisions have been included for a member to be reimbursed the allowable travel cost when they had a close relative who has a serious illness or very serious illness overseas and the member and their spouse or partner travelled to visit the close relative or child. The transitional provision also provides for a member to be reimbursed the allowable travel cost when they had a close relative, or child who is a dependant, who died and the member and their spouse or partner travelled to attend the funeral.

Schedule 2 of this Determination inserts an approved club for Madrid, Spain into the Principal Determination. This amendment does not engage human rights.

Conclusion

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

Louise Judith Memmolo, Acting Assistant Secretary People Policy and Employment Conditions