

Explanatory Statement

Defence Determination, Conditions of service Amendment (COVID-19 response) Determination 2020 (No. 7)

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* (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 the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 14A sets out provisions dealing with evacuation from an overseas location in response to COVID-19.

The purpose of this Determination is to enable the ADF to respond to the Coronavirus (COVID-19), particularly in relation to:

- a member of the Reserves who is absent from their place of duty when they are required to isolate themselves from the workplace.
- a member of the ADF and their family who have been evacuated from an overseas location and are required to isolate themselves.
- a member who is on a long-term posting overseas and their dependants who are in Australia and unable to return to the posting location.

Some provisions relating to a person who was required to evacuate from a location have been extended to a member and their family who are permitted to evacuate from an overseas location in response to changes to the Department of Foreign Affairs and Trade policy.

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

Section 2 provides that this instrument commences on the day after registration.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Sections 1 and 2 amend section 1.3.29B of the Principal Determination which provides the definition of 'isolation period'. Section 1 amends the definition by removing 'as set by the Department of Health', this will allow the isolation period to include isolation periods imposed by State and Territory governments. Section 2 omits the second note which is no longer relevant as a consequence of the change in section 1.

Section 3 inserts a new Division after section 4.9.17 of the Principal Determination. The new Division provides a Reserve service payment to a member of the Reserves during a period of isolation or infection due to COVID-19. The new Division includes the following.

- Section 4.9.18 provides defined terms that are used in the Division, including defining a pattern of Reserve Service, when a person is required to isolate and Reserve allowance.
- Section 4.9.19 specifies who the Division applies to.
- Section 4.9.20 provides a payment to a member of the Reserves if they are required to isolate themselves when the member was exposed to an infectious disease during the course of their service. The payment is an amount that is equal to the salary they would have received if they rendered service on each day of the isolation period. A member is not eligible to receive payment of more than 10 days salary and reserve allowance for a pay period.
- Section 4.9.21 provides a payment to a member of the Reserves who has completed a Defence activity and are required to isolate themselves at the end of the activity. The payment is an amount that is equal to the salary they would have received if they rendered service on each day of the isolation period. A member is not eligible to receive payment of more than 10 days salary and reserve allowance for a pay period.
- Section 4.9.22 provides a payment to a member of the Reserves who is unable to work their pattern of Reserve service for a reason relating to the control of COVID-19. The payment is an amount that is equal to the salary and reserve allowance they would have received during their pattern of Reserve service.
- Section 4.9.23 provides a payment to a member of the Reserves who is diagnosed with COVID-19 and is not eligible for a payment consequential to section 3.2.13 of the Principal Determination. The payment is an amount of salary and reserve allowance they would have received during their pattern of Reserve service.
- Section 4.9.24 provides that a member is not eligible for a Reserve service payment for the same period that the member is receiving income by way of salary, which may include Reserve salary, or wages or is on a medical absence. It also provides that the member is only eligible for one payment of under the Division at a time.

Schedule 2—Overseas conditions amendments

Section 1 amends section 14A.1.4 of the Principal Determination which provides for evacuation flights from the person's overseas location to a location in Australia. Subsection 14A.1.4.1 provided different destinations for a person being evacuated based on whether a person is required to evacuate or is permitted to evacuate. The subsection is being amended to provide that a person is eligible for an economy class flight from their location to the capital city nearest to the location where they will live in Australia.

Section 2 amends section 14A.1.5 of the Principal Determination which provides for economy class flights back to the member's place of duty once the evacuation period has ended. Subsection 14A.1.5 is being amended to provide that a person who received a flight under section 14A.1.4 is eligible for an economy class flight from the nearest capital city in Australia to their posting location overseas or location of short-term duty.

Section 3 amends the heading of Chapter 14A Part 1 Division 2 of the Principal Determination to better reflect the content of the Division.

Section 4 amends subsection 14A.1.7.2 of the Principal Determination which provides the period that a person is eligible for accommodation in Australia. The subsection is being amended to provide that a member is eligible for reasonable commercial accommodation with cooking facilities.

Sections 5 and 6 amend section 14A.1.8 of the Principal Determination which provides a meal supplement allowance for a person who is eligible for accommodation under section 14A.1.7 of the Principal Determination.

- Section 5 amends the heading of the section to better reflect the content.
- Section 6 amends subsection 14A.1.8.2 to clarify the period for when a person is eligible for meal supplement allowance. The period varies on when the person was evacuated and their arrival in Australia.

Section 7 inserts a new section into the Principal Determination which provides that a person is eligible for an additional 14 days accommodation provided under section 14A.1.7 on completion of an isolation period. The person is not eligible for the meal supplement allowance for the longer period unless provided for in section 14A.1.8.

Section 8 amends the heading of Chapter 14A Part 1 Division 3 of the Principal Determination to better reflect the content of the Division. The Division applies to a person who is required to evacuate from an overseas location. The changes made by sections 9 to 21 of this Determination expand the benefits under the Division to include people who are permitted to evacuate from an overseas location.

Section 9 omits and substitutes section 14A.1.9 of the Principal Determination which specifies who Division 3 applies to. The section has been amended to expand who is eligible for the benefits provided under the Division.

Section 10 omits and substitutes section 14A.1.10 of the Principal Determination which provides reasonable temporary accommodation to a person who has been evacuated and does not have their own home where they can live. The section has been amended to clarify the period when temporary accommodation is available under the section and to reduce the restriction on the type of temporary accommodation that is available to a member who does not have a dependant. A note has been included which provides that a member who occupies living-in accommodation under this section does not have pay a contribution.

Section 11 omits and substitutes section 14A.1.11 of the Principal Determination which provides a person with an allowance to assist with the cost of meals for each day of the isolation period. The section has been omitted and substituted with accommodation limits and contributions for the temporary accommodation provided under section 14A.1.10. Meal supplement allowance is now payable under section 14A.1.8.

Section 12 omits and substitutes section 14A.1.12 of the Principal Determination provides a larder establishment payment for a person who was receiving meal supplement allowance which has ceased. The section has been amended to clarify that only a person required to evacuate is eligible for the larder establishment payment.

Section 13 omits section 14A.1.13 from the Principal Determination which provides a person who has been evacuated with an incidentals payment. This is a one-off payment to cover the costs of items that are incidental to the evacuation. This section has been removed due to a change in Department of Foreign Affairs and Trade policy.

Section 14 omits the heading of Chapter 14A Part 1 Division 4 of the Principal Determination. The benefits provided under Division 4 are now included in Division 3.

Sections 15 and 16 amend section 14A.1.14 of the Principal Determination which provides a person who has been evacuated from a location with the ability to store personal possessions that they have not been able to secure or bring back to Australia. Section 15 amends a typographical error. Section 16 amends subparagraph 14A.1.14.a.i to provide that a member on long term posting overseas is eligible for the storage of their motor vehicles.

Section 17 amends section 14A.1.15 of the Principal Determination which provides for the accommodation and care of the pets of a member on a long-term posting overseas that remain in the overseas location if the member is evacuated. Paragraph 14A.1.15.b has been omitted to remove the eligibility requirement that the member has been required to evacuate the posting location.

Section 18 amends section 14A.1.16 of the Principal Determination which enables Defence to cease a member's overseas living allowances if they have been evacuated to Australia. Subsection 14A.1.16.1 has been amended to remove the condition that the member is to have received an evacuation flight under section 14A.1.4 for the section to apply.

Section 19 amends section 14A.1.17 of the Principal Determination which enables Defence to cease hardship or location allowances if they have been evacuated to Australia. Subsection 14A.1.17.1 has been amended to remove the condition that the member is to have received an evacuation flight under section 14A.1.4 for the section to apply.

Sections 20 and 21 amend section 14A.1.18 of the Principal Determination which enables members with children who have been evacuated from an overseas location to be reimbursed the costs of tuition fees

for up to 10 hours per week per child. The section has been amended to remove the condition that the member is to have received an evacuation flight under section 14A.1.4 for the section to apply.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions 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, consultation was undertaken with the Department of Foreign Affairs and Trade, the Services, Reserve and Youth Division and the Directorate of Attaché and Overseas Management in the Strategic Policy and Intelligence Group in the Department of Defence.

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

The purpose of this Determination is to enable the ADF to respond to the Coronavirus (COVID-19), particularly in relation to a member of the Reserves who is absent from their place of duty when they are required to isolate themselves from the workplace.

The Determination also amends provisions for a members of the ADF and their family who have been evacuated from an overseas location and are required to isolate themselves. Some provisions relating to a person who was required to evacuate from a location have been extended to a member and their family who are permitted to evacuate from an overseas location in response to changes to the Department of Foreign Affairs and Trade policy.

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 recognises the right of everyone to just and favourable conditions of work including remuneration, safe and healthy working conditions, equal opportunity for promotion, and rest, leisure and reasonable limitation of working hours.

This Determination promotes the right to just and favourable work conditions by providing assistance in the form of an allowance to members of the Reserves who are unable to attend their place of duty due to a period of self-isolation.

The Determination also amends provisions for people who are required to evacuate to allow the benefits to be provided to people who are permitted to evacuate or are unable to return to the posting location overseas due to COVID-19.

Conclusion

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions