

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment Determination 2023 (No. 5)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (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* (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 obligations 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 do the following:

- Clarify a member with dependants' eligibility to remote location leave travel benefits under Scheme A and Scheme B.
- Provide the Christmas stand-down dates for the 2023-2024 Christmas period.
- Amend the overseas public holiday provisions consequential to the change to the Christmas stand-down period.
- Change the approved club for members posted to Israel.
- Amend the hardship location grades for members on short-term duty or long-term posting at certain locations overseas in line with the revised location ratings provided by the whole-of-Australian-Government data provider, Employment Conditions Abroad. The rate of location allowance payable and the rate of accrual for additional recreation leave benefits are adjusted to reflect changes in conditions within specific hardship locations.
- Include Operation FORTITUDE as a recognised operation to provide specific conditions of service associated with a deployment.
- Make routine updates to the rates of disturbance allowance and to the additional payment resulting from their child changing schools following a removal. These adjustments reflect the annual movement in the relevant Consumer Price Index group to the end of the September 2022 quarter.
- Make routine updates to the vehicle allowance rate provided to eligible members to reflect the annual movement in the relevant Consumer Price Index group to the end of the September 2022 quarter.

Operational details

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

Retrospective application

The retrospective application of Schedule 6 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:

- Schedules 1 and 2: The rule maker was satisfied that the changes made by these Schedules are technical in nature and consultation was not required.
- Schedule 3 items 1 to 5: Navy, Army, Air Force and the Directorate of Attaché and Overseas Management.
- Schedule 3 item 6: Headquarters Joint Operations Command.
- Schedules 4 and 5: Defence One, Directorate of Relocations and Housing and Defence Travel Services.
- Schedule 6: The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.

The rule maker was satisfied that further 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 Amendment Determination 2023 (No. 5)

Operational details

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

- Sections 1 to 4 of the Determination commences on the day the instrument is registered.
- Schedules 1 to 3 and Schedule 6 of the Determination commence on 13 April 2023.
- Schedules 4 and 5 of the Determination commence immediately after the commencement of Defence Determination, Conditions of service Amendment (Employment offer modernisation) Determination 2023 (No. 1).

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—Remote location leave travel amendment

Item 1 repeals and substitutes subsection 9.4.29.2 of the Principal Determination that a member is eligible for remote location leave travel for themselves and their dependants if the CDF is satisfied that the member is likely to serve in the remote location for at least 12 months. The subsection has been amended to clarify whether a member is eligible for Scheme A, or Scheme A and B benefits depending on the level of ADF District allowance the location the member is serving in attracts.

Amendments made under this Schedule are technical in nature and do not alter the underlying policies, or the benefits which are currently provided.

Schedule 2—Christmas stand-down and overseas public holidays amendments

Item 1 amends section 5.12.3 of the Principal Determination which provides the Christmas stand-down periods for member's performing duty in Australia. Subsection 5.12.3.1 has been amended to provide the Christmas stand-down period for 2023-2024. The subsection has also been amended to remove the dates of previous Christmas stand-down periods.

Items 2 to 4 amend section 15.1.10 of the Principal Determination which provides that a member on long-term posting overseas is eligible to observe a maximum of 13 public holidays in a calendar year. The changes are as follows.

- Item 2 repeals and substitutes subsection 15.1.10.1 to provide that the decision maker may direct 10 days which members are to observe as public holidays in the posting location overseas. The number of public holidays that a decision maker may direct has been reduced from 13 days to 10 days in a calendar year. Although the number of public holidays that may be directed has been reduced by 3 days, the number of days that is in the Christmas stand-down period in section 15.1.11 has been increased by 3 days.
- Item 3 repeals and substitutes subsection 15.1.10.2 to provide what the decision maker must have regard to when directing the number of public holidays for a posting location overseas. A new criteria that the decision maker must consider whether the public holiday is included in the Christmas stand-down period.
- Item 4 amends subsection 15.1.10.3 to amend a reference consequential to the changes made by items 2 and 3.

Item 5 amends section 15.1.11 of the Principal Determination which provides the Christmas stand-down period for member's on long-term posting overseas. Subsection 15.1.11.3 has been amended to provide the Christmas stand-down period for 2023-2024. The Christmas stand-down period has been amended to include any Australian public holiday days that occur between the first and last days within the period which is consistent with the period provided under section 5.12.3 for members performing duty within

Australia. The subsection has also been amended to remove the dates of previous Christmas stand-down periods.

Schedule 3—Overseas amendments

Item 1 amends table item 8 of subsection 15.8.2.2 of the Principal Determination which specifies the approved club in Israel for the purpose of pursuing sporting, recreational and fitness activities. The table item is amended to change the approved club for Israel from “Moadan Club Tel Aviv”, which is no longer in operation, to “Arab-Jewish Community Centre”.

Items 2 to 5 amend Annex 16.B to Chapter 16 of the Principal Determination which provides details used for determining benefits which are provided to members and their dependants to assist with the difficulties or hardships they may experience on short-term duty or long-term posting at certain locations overseas. The items in this Schedule amend the hardship location grade under column 4 of Annex 16.B for the following overseas locations to align with the revised location ratings provided by the whole-of-Australian-Government data provider, Employment Conditions Abroad.

- Item 1 omits “B” and substitutes “C” for Israel in table item 18.
- Item 2 omits “E” and substitutes “D” for Marshall Islands in table item 31.
- Item 3 omits “E” and substitutes “D” for Micronesia in table item 32.
- Item 4 omits “D” and substitutes “E” for Tonga in table item 54.

Item 6 amends section 17.7.6 of the Principal Determination which provides the rate of deployment allowance payable to a member deployed on a specified operation. The table in subsection 17.7.6.1 has been amended to include Operation FORTITUDE as an operation for the payment of deployment allowance.

Schedule 4—Disturbance allowance rates amendments

Item 1 amends section 6.1.6 of the Principal Determination which sets out the rate of disturbance allowance that may be payable to members. The amendment updates the rates of disturbance allowance specified in column C of the table in line with the annual movement in the Consumer Price Index group to the end of the September 2022 quarter.

Item 2 repeals and substitutes section 6.1.12 of the Principal Determination which provides that a member whose child is a full-time primary or secondary student is required to change schools because of a removal. The item updates the rates of additional payment in subsection 1 from “\$248” to “\$266”, and is redrafted to promote contemporary drafting practices.

Schedule 5—Vehicle allowance rates amendments

Item 1 repeals and substitutes section 9.6.25 of the Principal Determination which sets out the rate of vehicle allowance. The item promotes contemporary drafting styles and amends the section in the following ways.

- The formula set out in subsection 1 has been amended to provide that when calculating the amount of vehicle allowance a member is eligible for, “A” is either the number of whole kilometres for the shortest route it is reasonable to take, or the number of whole kilometres for a longer route set by the CDF.
- The rate of vehicle allowance under column C of the table in subsection 9.6.25.1 has been updated in line with the annual movement in the Consumer Price Index group to the end of the September 2022 quarter.
- Subsection 2 had been amended as a consequence of the changes made to the formula in subsection 1.

Item 2 repeals and substitutes subsection 9.6.26.1 of the Principal Determination which provides that a member’s vehicle allowance rate under section 9.6.25 may be increased if they carry a passenger, carry equipment, tools or materials or tow a caravan or trailer. The subsection has been amended to increase

the cent per kilometre rate from “0.96” to “1.06”. The adjustment made is in line with the annual movement in the Consumer Price Index group to the end of the September 2022 quarter.

Schedule 6—Transitional provisions

Clause 1 defines Defence Determination 2016/19 for the purpose of this Schedule, which is incorporated as in force from time to time.

Clause 2 provides that clause 3 of this Schedule applies to a member who is or was posted to Israel and eligible for the cost of club membership in Israel under section 15.8.4 or 15.8.5 of the Principal Determination between 31 January 2023 and the commencement of this Determination.

Clause 3 provides that a member is eligible for the cost of club membership under section 15.8.4 or 15.8.5 of the Principal Determination had Schedule 3 item 1 of this Determination been in force between 31 January 2023 and the commencement of this Schedule. The section also provides that the amount a member is eligible for under this section is reduced by the amount the member received for the cost of a membership under section 15.8.4 or 15.8.5 of the Principal Determination between 31 January 2023 and the commencement of this Determination that has not been repaid.

Clause 4 provides that clause 5 of this Schedule applies to a member who was eligible for a benefit which relies on item 18 or 54 of Annex 16.B to the Defence Determination between 5 January 2023 and the commencement of this Determination. These benefits include location allowance and additional recreation leave for member's posted overseas.

Clause 5 provides that the rate of location allowance and the number of days of additional recreation leave for member's posted to Israel or Tonga is retrospectively increased from 5 January 2023 in line with the change in the hardship location grade that applies as a consequence of this Determination.

Clause 6 provides that clause 7 of this Schedule applies to a member who performed duty on Operation FORTITUDE, inserted by Schedule 3 item 6 of this Determination, between 10 November 2022 and the commencement of this Determination.

Clause 7 provides that the member is eligible for the payment of deployment allowance for any day that they performed duty in the specified area for Operation FORTITUDE. This amount is reduced by any amount of deployment allowance that the member received between 10 November 2022 and the commencement of this Determination.

Defence Determination, Conditions of service Amendment Determination 2023 (No. 5)**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:

- Clarify a member with dependants' eligibility to remote location leave travel benefits under Scheme A and Scheme B.
- Provide the Christmas stand-down dates for the 2023-2024 Christmas period.
- Amend the overseas public holiday provisions consequential to the change to the Christmas stand-down period.
- Change the approved club for members posted to Israel.
- Amend the hardship location grades for members on short-term duty or long-term posting at certain locations overseas in line with the revised location ratings provided by the whole-of-Australian-Government data provider, Employment Conditions Abroad. The rate of location allowance payable and the rate of accrual for additional recreation leave benefits are adjusted to reflect changes in conditions within specific hardship locations.
- Include Operation FORTITUDE as a recognised operation to provide specific conditions of service associated with a deployment.
- Make routine updates to the rates of disturbance allowance and to the additional payment resulting from their child changing schools following a removal. These adjustments reflect the annual movement in the relevant Consumer Price Index group to the end of the September 2022 quarter.
- Make routine updates to the vehicle allowance rate provided to eligible members to reflect the annual movement in the relevant Consumer Price Index group to the end of the September 2022 quarter.

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.

Right to an adequate standard of living

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Right of the child to education

The protection of a child's right to education engages Article 28 of the Covenant on the Rights of the Child. Article 28 requires States to provide access to different types of education.

Assessment of compatibility

Schedules 1 and 2 make amendments to the Principal Determination which do not change the underlying policies or benefits. As such, they do not engage with any of the applicable rights or freedoms.

Schedule 3 item 1 are compatible with human rights as it provides a replacement approved club for members and their dependants to join when the member is posted to Israel, so members and their dependants in that location can continue to receive a benefit as a part of the member's conditions of service to pursue sporting, recreational and fitness activities.

Schedule 3 items 2 to 5 are compatible with human rights they acknowledge the difficulties and hardships the members and their dependants may experience when on duty or posted to certain overseas hardship locations by adjusting hardship ratings to reflect the current situation in specified locations.

Schedule 3 item 6 is compatible with human rights as it provides members with additional remuneration as a part of their conditions of service to compensate members for the conditions they encounter while on deployment.

Schedule 4 is compatible with human rights as the increase in the rate of disturbance allowance provided to members and the additional payment associated with the member's child's change of school because of a removal reflect just and favourable conditions of work, adequate standard of living and education for the member and their dependants.

Schedule 5 is compatible with human rights as the increase in the rate of vehicle allowance provided to members reflects just and favourable conditions of work. The annual adjustment made as a result of the changes in the consumer price index ensures that the rates of allowances payable to members as a part of their conditions of service remain current.

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*.