

EXPLANATORY STATEMENT

Defence Determination, Force Commander, Multinational Force and Observers – supporting benefits, Amending Determination 2024 (No. 1)

This Determination amends Defence Determination, Force Commander, Multinational Force and Observers – supporting benefits Determination 2024 (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.

The Multinational Force and Observers (MFO) is an international organisation that has peacekeeping responsibilities in the Sinai. The Force Commander of the MFO (FCMFO) has the responsibility of the international military contingents of the MFO, and maintains the good order of the MFO Force. In March 2024, a member of the Australian Defence Force (ADF) commenced a 2-year appointment as FCMFO. The member's appointment as FCMFO provides the opportunity for Australia to positively affect the security environment in the Sinai.

Purpose

The purpose of this Determination is to provide that the *Privacy Act 1988* applies to the member's dependant's certificates of fitness and how the certificates must be filed by the Joint Health Command.

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

The rule maker was satisfied that the changes made by this Schedule are technical in nature and consultation was not required.

Approved by:

COL Kirk Lloyd
Acting Assistant Secretary
People Policy and Employment Conditions

Authority:

Section 58B of the
Defence Act 1903

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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 the day the instrument is registered.

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

Section 4 provides that this instrument amends Defence Determination, Force Commander, Multinational Force and Observers – supporting benefits Determination 2024.

Section 5 amends subsection 9.2 of the Principal Determination which provides the conditions a medical or dental certificate of fitness must meet. The note under the subsection has been substituted to make the following changes;

- Note 1 has been amended to specify that the provisions under the *Privacy Act 1988* apply to certificates under section 9.
- A new note 2 has been included to provide that the Joint Health Command must file the certificates as Official: Sensitive, Personal privacy//Health Information. This will ensure that the personal medical information contained on the certificates is filed in a manner that will maintain the privacy of the member's dependant and that the information will only be used for the intended purpose. The file and its contents will be managed in accordance with the *Privacy Act 1988* and the *Archives Act 1983*.

The requirement for the member's dependant to obtain medical and dental certificates before leaving Australia to accompany the member on the overseas appointment is to ensure that, if the dependant has any medical, dental, physical, mental or intellectual condition, there will be suitable facilities for the ongoing treatment and care of the dependant in the location.

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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 provide that the Privacy Act 1988 applies to the member's dependant's certificates of fitness and how the certificates must be filed by the Joint Health Command.

Human rights implications

Right to the protection and assistance to the family

The protection of a person's right to family protection and assistance engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance be accorded to the family.

Assessment of compatibility

This Determination is compatible with human rights as it provides how the member's dependant's personal medical information is filed to ensure that the personal medical information contained on the certificates is filed in a manner that will ensure the privacy of the member's dependant and that the information will only be used for the intended purpose.

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*.