

EXPLANATORY STATEMENT

Defence Determination 2016/23

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.

In making this Determination, the rule-maker has taken the Caretaker Conventions into account. The amendments made to the Principal Determination do not represent major policy decisions that are likely to commit an incoming government, and do not commit the government to major contracts or undertakings. The amendments do not have any financial implications nor do they affect Australian Defence Force (ADF) members. As such, the amendments are consistent with the continued observance of the Caretaker Conventions.

This Determination amends the Principal Determination which sets out conditions of service for members of the ADF.

The purpose of this Determination is to align terms used in the Principal Determination with its parent legislation. The amendments are as a result of changes to the *Defence Act 1903* by *Defence Legislation Amendment (First Principles) Act 2015*, which implements recommendations made by the *First Principles Review – Creating One Defence* report to improve the overall operation of Defence and the ADF.

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

Section 2 of this Determination provides that the Determination commences on 1 July 2016.

Section 3 specifies that the amendment is made to the Principal Determination, as amended.

Sections 4 to 22, 24 to 28, 32 to 43, 45 to 46, 48 to 58, 60 to 64 and 66 to 73 amend terminology in the Principal Determination to align with definitions under the Defence Act. This includes replacing 'Reservist' or 'Reserve Force member' with 'member of the Reserves' and replacing 'Permanent Force' with 'Permanent Forces'. These amendments do not affect the operation of the rules and there is no detriment to the members.

Sections 23, 29, 30, 31, 44, 47, 59 and 65 amend references to Defence Act section numbers or remove references that no longer exist.

Consultation

No external consultation was undertaken in accordance with section 17 of the *Legislation Act 2003* before this Determination was made as it is a minor or machinery nature and does not substantially alter existing arrangements. It changes the terminology used in the Principal Determination to reflect amendments to the Defence Act.

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

Defence Determination 2016/23, First Principles Review – amendment

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 align terms used in the Principal Determination with its parent legislation. The amendments are as a result of changes to the *Defence Act 1903* by *Defence Legislation Amendment (First Principles) Act 2015*, which implements recommendations made by the *First Principles Review – Creating One Defence* report to improve the overall operation of Defence and the ADF.

Human rights implications

This Determination does not engage any applicable rights or freedoms. It simply aligns some terms with and adjusts some references to the parent Act as a consequence of the *Defence Legislation Amendment (First Principles) Act 2015*, which implements recommendations in the *First Principles Review – Creating One Defence* report to improve the overall operation of Defence and the ADF.

Conclusion

This Determination is compatible with human rights because it does not engage any applicable human rights or freedoms.

Tyson Paul Sara, Assistant Secretary People Policy and Employment Conditions