

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017

Determination of pay-related allowances

The *Military Rehabilitation and Compensation Act 2004* (the Act) provides for compensation and other benefits to current and former members of the Australian Defence Force who suffer a service injury or disease.

Subsection 11(1) of the Act requires the Defence Minister to make a written determination specifying which allowances paid under the *Defence Act 1903* (the Defence Act) are pay-related allowances for the purposes of the Act.

The determination of an allowance as ‘pay-related’ permits the allowance to be taken into account as part of the normal earnings and actual earnings of members of the Defence Force who seek compensation under the Act.

This Determination is a principal determination that includes a comprehensive list of allowances that can be amended as they are introduced, omitted or change name. It repeals all previous determinations which automatically sunsets in April 2017. Section 2 specifies that this Determination commences on the day after it is registered.

Section 3 provides the authority under which this Determination is made, subsection 11(1) of the Act.

Section 4 provides that each instrument specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 defines terms used throughout the Determination.

Section 6 specifies the pay-related allowances determined under section 58B of the Defence Act and the names and dates on which the allowances are taken to be pay-related allowances for the purposes of subsection 11(1) of the Act.

Section 7 specifies the pay-related allowances determined under section 58H of the Defence Act and the names and dates on which the allowances are taken to be pay-related allowances for the purposes of subsection 11(1) of the Act.

Schedule 1 lists the previous determinations that are being repealed by this determination.

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. The Department of Veterans' Affairs was consulted on the proposed changes. This instrument is required because two determinations are due to sunset in 2017 as follows:

- Military Rehabilitation and Compensation (Pay-related allowances) Determination 2006 (No.1); and
- Military Rehabilitation and Compensation (Pay-related allowances) Determination 2006 (No. 2).

The application of this Determination to the allowances for periods retrospective to the day it is made, does not affect the rights of any person (other than the Commonwealth) so as to disadvantage that person or impose liabilities on any person (other than the Commonwealth) in respect of anything done or omitted to be done before the date that this Determination is registered, and so does not breach subsection 12(2) of the *Legislation Act 2003*. It ensures that benefits based on pay-related allowances can be paid to claimants for compensation.

Authority: Section 11(1) of the
*Military Rehabilitation and
Compensation Act 2004*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017

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 specifies which allowances, paid under the *Defence Act 1903*, are pay-related allowances for the purposes subsection 11(2) of the *Military Rehabilitation and Compensation Act 2004*.

Human rights implications

Right to the highest attainable standard of physical and mental health

The protection of a person's right to health engages Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 guarantees the right of everyone to the highest attainable standard of physical and mental health.

Legitimate objective: This Determination engages the specific rights in paragraph 12.2(d) of ICESCR. It ensures that current and former ADF members are provided with regular compensation payments while they are incapacitated for service as a result of a service injury or disease. This ensures they are supported to regain health in the event they lose the capacity to perform their normal duties due to a service injury or disease.

Reasonable, necessary and proportionate: Defence sometimes requires its members to perform duties of a dangerous nature. In the event that a member becomes ill or injured as a result of performing their duties, and is unable to perform those duties, it is appropriate that they are compensated during their rehabilitation. This Determination lists the ADF allowances that are pay-related for the purpose of providing appropriate compensation support instead of the members' normal remuneration.

Conclusion

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

Dan Tehan, Minister for Defence Personnel