

EXPLANATORY STATEMENT

Defence Determination 2017/21

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.

Chapter 4 of the Principal Determination sets out provisions dealing with allowances and reimbursements for members of the Australian Defence Force.

This Determination has the following two purposes.

- To remove a trial period for a member to receive higher duties allowance when posted to a higher position.
- To clarify that in order to perform higher duties a member must be directed by a directing member.

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

Section 2 is the commencement provision for the Determination and includes a table setting out the details of the commencement of sections of the Determination. Column 1 of the table sets out the provisions in numbered items, column 2 sets out the commencement and column 3 sets out date/details. Information in column 3 does not form part of the Act, so information can subsequently be inserted in the column (or edited) in a published version of the Determination.

Item 1 in the table provides that the whole of this Determination commences on 29 June 2017.

Section 3 provides that this instrument has authority under section 58B of the *Defence Act 1903*.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Schedule 1 section 1 omits and substitutes subsection 4.1.2.1 of the, which provides the situations in which higher duties may be used. The changes make it clear that a member must be directed to perform higher duties by a directing member, under Division 2 of the Principal Determination.

Schedule 1 section 2 repeals section 4.1.17 of the Principal Determination which provided a trial period to assess a member's competence to perform higher duties before paying them. The section is omitted because this contravenes another provision in the Part which provides that a member cannot be directed to perform higher duties until the decision maker is satisfied the member is capable of performing those duties.

Schedule 2 – Transitional provision

Schedule 2 is a transitional provision that provides the former section 4.1.17 of the Principal Determination (omitted by Schedule 1 of this Determination) still applies to a member who was on a trial period to perform higher duties immediately before the commencement of this Determination.

Consultation

The Navy, Army, and Air Force were consulted in the development of this Determination. The rulemaker 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

Defence Determination 2017/21, Higher duties allowance – 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

This Determination has the following two purposes.

- To remove a trial period for a member to receive higher duties allowance when posted to a higher position.
- To clarify that in order to perform higher duties a member must be directed by a directing member.

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.

Higher duties allowance is paid to members in a range of situations. Usually this involves performance of duties at a higher rank.

Legitimate objective: In an organisation as large and busy as the ADF it is inevitable that there is a need to fill short and medium term job vacancies. Filling these vacancies gives the organisation flexibility, and has the additional advantage of developing members' skills and experience.

Reasonable, necessary and proportionate: Higher duties allowance ensures that members are properly remunerated for the additional skills they are required to display, when performing jobs of higher work value. This Determination ensures that a member cannot be directed to perform higher duties unless they meet the eligibility criteria.

Conclusion

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

Lisa Annette Arnold, Acting Assistant Secretary People Policy and Employment Conditions