

EXPLANATORY STATEMENT

Defence Determination 2017/27

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 (ADF).

This Determination amends the provisions for health support allowance and revises terms used for categories of the Reserve, to reflect changes brought about by the introduction of the *Defence Regulation 2016*.

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 the Determination commences on the day after it is registered.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 substitutes section 4.9.17 of the Principal Determination, which sets out the eligibility and payment requirements for Active and Specialist Reserve health support allowance. These categories of the Reserves had the meaning given by Regulation 5 of the *Defence (Personnel) Regulations 2002*. In October 2016, the *Defence (Personnel) Regulations 2002* were repealed by the *Defence Regulation 2016* and these categories were not retained. As a consequence of the repeal and the language used to describe the members; section 4.9.17 is no longer able to operate. Schedule 1 amends section 4.9.17 as follows.

Subsection 1 sets out the conditions a member of the Reserves must meet to be eligible for health support allowance under this section.

Subsection 2 provides that for a member to be entitled to the payment, an application must be made in a form (which may be electronic) and manner authorised by the Chief of the Defence Force (CDF). The application must contain any information and be accompanied by any supporting documents required by CDF. This means the CDF may specify what information is to be provided in applications, how applications are to be made and where they are to be lodged.

- For many members the procedure is completing a health declaration form on time. They are then eligible for payment of the allowance.
- If a member indicated on the health declaration form that they have a change in medical circumstances, the member must then have a consultation with their general medical practitioner to complete the application process. This consultation is at the member's expense, but costs are offset by the amount of the allowance.

Subsection 3 provides that the collection of sensitive information is authorised by the *Privacy Act 1988*. 'Sensitive information' is defined in subsection 6(1) of the *Privacy Act 1988* to include health information. Australian Privacy Principle 3.4(a) authorises the collection of sensitive information if the collection is required or authorised by or under law. Subsection 3 provides the relevant authorisation.

Schedule 2 provides a savings provision for members who would otherwise have been eligible for the allowance had the regulations not been repealed. This provision only operates for the previous financial year, which is when the *Defence (Personnel) Regulations 2002* were repealed. Schedule 1 of this Determination has amended the rules for subsequent financial year.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

Consultation

Internal consultation was undertaken during the development of this Determination. Joint Health Command, the Defence specialist area responsible for health services also provided specialist medical advice. The rulemaker was satisfied that 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 2017/27, Health support 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 purposes.

- It amends the provisions for the High Readiness Reserve health support allowance and the Active and Specialist Reserve health support allowance (renamed health support allowance for Reserve members on short-notice capability and health support allowance for other Reserve members), respectively.
- It revises terms used for categories of the Reserve, to reflect changes brought about by the introduction of the *Defence Regulation 2016*.

Human rights implications

Right to physical and mental health

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

Legitimate objective: Defence provides health services to members of the Permanent Forces to maximise the health of its workforce, and to ensure the preparedness of members for operations. The health support allowances are paid to encourage members of the Reserve to seek regular health care, to ensure the greatest possible operational readiness for Reserve members.

Reasonable, necessary and proportionate: Reserve members have the same access to the Australian health care system as any other citizen. This Determination advances the member's right to the highest attainable standard of physical and mental health by providing allowances to assist with the financial cost of seeking regular health care.

The allowances are not paid unless members agree to provide information about their health, and, in some cases, seek further medical advice from their doctor. Medical information that the member chooses to provide is treated in accordance with the *Privacy Act 1988*.

Conclusion

This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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