

# EXPLANATORY STATEMENT

## Military Rehabilitation and Compensation (Pay-related Allowances) Amendment Determination 2019

The *Military Rehabilitation and Compensation Act 2004* (the Act) provides for compensation and other benefits to be provided 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. A determination made under section 11(1) of the Act is a legislative instrument for the purposes of the *Legislation Act 2003* (LA Act).

Referring to a class of allowance by descriptive name (or a more general description), is not applying, adopting or incorporating any matter in an instrument or other writing. The *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017* specifies a particular allowance as a pay-related allowance for the purposes of the Act.

The determination of an allowance as “pay-related” enables the allowance to be taken into account as part of the normal and actual earnings of a member of the Defence Force, or a former member of the Defence Force, who seeks compensation under the Act.

Only pay-related allowances that a member or former member of the Defence Force was receiving prior to being incapacitated for service or work can be compensated for under the Act. The determination of an allowance as pay-related is beneficial to members and former members. If an allowance has not been specified as pay-related it cannot be included in calculations of incapacity payments.

The purpose of this Determination is to make minor amendments to the *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017*. The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such a person. Accordingly, this determination is not affected by subsection 12(2) of the Legislation Act 2003.

Section 1 cites the full title of this Determination.

Section 2 specifies that this Determination commences on the day after it is registered.

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

Section 4 provides that each instrument specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

### Schedule 1 – Amendments to Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017

Item 1 amends the table in section 6 of the *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017*, which provides a list of the allowances determined under section 58B of the Defence Act that are to be considered pay-related allowances for the purposes of the *Military Rehabilitation and Compensation Act 2004*. The table has been amended to insert a new allowance, location allowance, which was formerly known as hardship allowance. Hardship allowance remains in the table as it will continue to be paid to ADF members who were posted to a hardship location before 1 July 2017 and continue to satisfy the eligibility criteria.

Item 2 amends the table in section 6 of the *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017* to address a minor typographical error, replacing “trainees” with “Trainee’s”.

Item 3 amends the table in section 7 of the *Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2017*, which provides a list of allowances determined under section 58H of

the *Defence Act 1903* that are to be considered pay-related allowances for the purposes of the *Military Rehabilitation and Compensation Act 2004*. The table has been amended to rename the “language proficiency allowance” with “language allowance” by removing the word “proficiency”. This amendment updates the name of the allowance.

Consultation was undertaken within the Defence agency. The Office of Best Practice Regulation has been consulted and as this Determination is a carve-out and of minor internal machinery arrangement no regulation impact statement is required (ID17489). The Office of Parliamentary Counsel were consulted for advice. The rule-maker was satisfied that further external consultation was not required.

**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) Amendment Determination 2019

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 instrument

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

This Determination engages the *right to social security* contained in Article 9 of the International Covenant on Economic Social and Cultural Rights. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The *rights of people with a disability* are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services. *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.

Darren Chester, Minister for Defence Personnel