

EXPLANATORY STATEMENT

Defence Determination, Conditions of service (Star rank increment advancement) Amendment Determination 2020 (No. 12)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AI 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 AI Act.

This Determination amends Chapter 3 of the Principal sets out provisions dealing with salaries and bonuses for members of the Australian Defence Force (ADF).

On 26 March 2020, the Australian Government requested a stay on increases to remuneration entitlements and allowances, and performance or increment adjustments of all employees of the Senior Executive Service in the Australian Public Service (APS) for the duration of the COVID-19 pandemic. The Government considered it inappropriate for senior public officials to continue to receive increases in salaries and allowances while many Australians are facing financial difficulty.

The purpose of this Determination is to apply the Australian Government's request regarding the APS to senior officers in the ADF, noting that Defence has an integrated workforce of both APS and ADF personnel. It achieves this outcome by ceasing salary increment advancement for certain officers in either the Permanent Forces or the Reserves who hold a rank of Brigadier or higher, or an equivalent rank. This is a temporary measure and, following the stabilisation of the Australian economy a further determination will be made to reinstate salary increment advancement.

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

Section 2 provides that this instrument commences on 9 July 2020.

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

Section 4 provides that each instrument that is specified in a schedule to this instrument is amended or repealed as set out in the applicable items in the schedule concerned, and any other item in a schedule to this instrument has effect according to its terms.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

Sections 1 and 2 amend section 3.2.30 of the Principal Determination which provides non-specialist members of the ADF with salary related increment advancement. The amendment makes subsection 3.2.30.1 subject to subsection 3.2.30.1A, inserted by section 2 of this Determination. The new subsection 3.2.30.1A, prevents non-specialist members of the ADF holding a rank of Brigadier or higher, or an equivalent rank, from receiving an increment advancement from 6 August 2020.

Sections 3 and 4 amend section 3.2.41 of the Principal Determination which provides increment advance for chaplains and dental officers. The amendments make subsection 1 subject to the new subsection 1A, inserted by section 4 of this Determination. Subsection 1A prevents a Chaplain holding a division 5 classification from receiving increment advancement from 6 August 2020.

Sections 5 and 6 amends section 3.2.43 of the Principal Determination which provides increment advancement for legal officers. The amendments make subsection 1 subject to the new subsection 1A, inserted by section 6 of this Determination. Subsection 1A prevents a legal officer holding a rank of Brigadier or higher, or an equivalent rank, from receiving increment advancement after 6 August 2020.

Consultation

Before this Determination was made, consultation was undertaken with the Defence Force Remuneration Tribunal, the Chief of the Defence Force, Navy, Army, Air Force and the Directorate of Senior Officer Management in the Department of Defence.

The rule maker 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

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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

On 26 March 2020, the Government requested a stay on increases to remuneration entitlements and allowances, and performance or increment adjustments of all employees of the Senior Executive Service in the Australian Public Service for the duration of the COVID-19 pandemic. The Australian Government considered it inappropriate for senior public officials to continue to receive increases in salaries and allowances while many Australians are facing financial difficulty.

The purpose of this Determination is to extend the Australian Government's direction senior officers in ADF. It achieves this outcome by ceasing salary increment advancement for specified senior officers. This is a temporary measure and, following the stabilisation of the Australian economy, a further determination will be made to reinstate salary increment advancement.

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.

Legitimate objective: This Determination stops certain senior members from receiving a pay increase by way of increment advancement in order to assist to minimise the economic impact of COVID-19 on the economy.

Reasonable, necessary and proportionate: The Determination is a temporary measure to cease pay increases provided through increment advancement for senior members of the ADF. It promotes the Government's policy of sharing the economic burden caused by COVID-19 pandemic and is consistent with the delay in pay rises across the Australian Public Service. Importantly, the Determination does not cease or reduce the salary of an ADF member. Increment advancements will be reinstated for affected members by a further determination to be made once the economy has stabilised.

Conclusion

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions