

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of service Amendment (Maritime Spiritual Wellbeing Officer and Specialist Officer) Determination 2020 (No. 14)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), made under section 58B of the *Defence Act 1903* (Defence Act) 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.

For the purpose of adopting Defence Force Remuneration Tribunal (DFRT) determinations, being instruments other than a legislative instrument, section 58B(1A) of the Defence Act provides a contrary intention to section 14(2) of the Legislation Act. Section 58B(1A) of the Defence Act permits DFRT determinations, as in force from time to time, being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act.

This Determination amends the following Chapters of the Principal Determination for members of the Australian Defence Force (ADF).

- Chapter 1 sets out provisions dealing with definitions and interpretation of concepts relevant to pay and conditions.
- Chapter 3 sets out provisions dealing with salaries and bonuses.
- Chapter 4 sets out provisions dealing with allowances and reimbursements.

This Determination has the following purposes.

- It includes Maritime Spiritual Wellbeing Officers as specialist officers for the purpose of salary administration as a consequence of the primary qualification being established by Defence Force Remuneration Tribunal Determination No. 3 of 2020, Salaries – Maritime Spiritual Wellbeing Officer – amendment.
- It amends the salary administration provisions for specialist officers to include a 'specialist level' as a criteria for the payment of salary.
- It makes amendments to senior officer increment advancement provisions consequential to changes made by Defence Determination, Conditions of service (Star rank increment advancement) Amendment Determination 2020 (No. 12). 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—Maritime Spiritual Wellbeing Officer

Section 1 omits and substitutes section 1.4.2 of the Principal Determination which provides the Chaplain classifications for conditions of service benefits. The section has been amended to include Maritime Spiritual Wellbeing Officer classifications. The section enables a person to convert a specific rank that may be used in the Principal Determination with the equivalent Chaplain or MSWO classification. The title has also been amended to better reflect the content of the section.

Sections 2 and 3 amend section 3.2.14 of the Principal Determination which provides when a Reserve member is taken to be attending for duty in special circumstances. Subsection 3.2.14.4 has been amended to provide that a Chaplain or Maritime Spiritual Wellbeing Officer is deemed to be on duty between the first and last days of each period they are rostered on a Notification Team roster. Subsection 3.2.14.5 has been omitted as it has been incorporated into the change made to subsection 3.2.14.4.

Section 4 amends section 3.2.40 of the Principal Determination which provides the purpose of Chapter 3 Part 2 Division 4. The section has been amended to include Maritime Spiritual Wellbeing Officers as members to whom the division applies.

Sections 5 to 7 amend section 3.2.41 of the Principal Determination which provides the increment advancement, promotion and advancement provisions for Chaplains and dental officers.

- Section 5 amends the title of the section to better reflect the content of the section.
- Section 6 amends subsection 3.2.41.1 to include Maritime Spiritual Wellbeing Officers as being eligible for increment advancement.
- Section 7 amends subsection 3.2.41.4 which has been split into 3 subsections. Subsection 3.2.41.4 provides the increment level for a Chaplain or Maritime Spiritual Wellbeing Officer who advances to a higher division or class in their salary structure. Subsection 3.2.41.4A provides the increment level for a dental officer. Subsection 3.2.41.4B is a discretionary provision which enables the CDF to set a higher salary for a member, this was previously an exception provided under subsection 3.2.41.4.

Section 8 omits and substitutes section 3.2.44 of the Principal Determination which provides that a Chaplain may only advance to a higher competency level if they meet set requirements. The section has been amended to include Maritime Spiritual Wellbeing Officers as eligible for advancement under this section. Subsection 3.2.44.1 has been rewritten to clarify that the CDF may place a Chaplain or a Maritime Spiritual Wellbeing Officer at a competency level based on the member's qualifications, skills and experience. The provision to designate a position as requiring a specific competency level that was previously provided under subsection 3.2.44.2 has been removed it is not within the power of section 58B of the Defence Act, it is a command power which is already afforded to the CDF under the Defence Act.

Section 9 amends the definition of **specialist officer** under section 4.1.15 of the Principal Determination. The definition has been amended to reflect a change made to the title of Schedule B.5 of DFRT Determination No. 2 of 2017, Salaries.

#### Schedule 2—Specialist Officer – amendment

Section 1 inserts a new section 3.2.18B into the Principal Determination. The new section provides a definition of **specialist level** for the purpose of Chapter 3 Part 2 Division 2.

Section 2 omits and substitutes section 3.2.19 of the Principal Determination which provides the salary on enlistment or appointment. The section has been amended to include salary for trainees which were previously provided under subsection 3.2.26.1, the eligibility conditions which were provided under subsection 3.2.26.1 have not been included as they are provided under subsection B.6.2.3 of DFRT Determination No. 2 of 2017, Salaries. The section has also been redrafted to provide clarity and to reflect new drafting standards.

Section 3 omits and substitutes section 3.2.20 of the Principal Determination which provides the salary a member is paid on promotion. The section has been redrafted to provide clarity and to reflect new drafting standards.

Section 4 omits and substitutes section 3.2.21 of the Principal Determination which provides the salary a member is paid on a change of pay grade. The section has been amended to include a change in a member's specialist level. An exception that was previously under subsection 3.2.21.2 is now a rule provided at subsection 3.2.21.3.

Sections 5 to 7 amend section 3.2.25 of the Principal Determination which provides the rate of salary payable to a member undergoing recategorisation training. The section is being amended to include a specialist level as one of the criteria for the determination of the rate of salary payable to an eligible member.

Sections 8 amends section 3.2.26 of the Principal Determination which provides the salary rate and advancement date for a member undergoing training. Section 8 omits subsection 3.2.26.1 which provided the rate of salary payable to a member undergoing training. This provision has been incorporated into section 3.2.19 by section 2 of this Schedule.

Sections 9 and 10 amend subsection 3.2.41.2 of the Principal Determination which provides when a Chaplain or dental officer is eligible for increment advancement. The section has been amended to provide that an eligible member is eligible for an increment advancement on the day 12 months after the member's last increment advancement.

### Schedule 3—Consequential amendments

Section 1 omits and substitutes section 1.3.63 of the Principal Determination which provides the definition of **Rank**. The definition has been amended to provide that the term rank includes a Chaplain division and a Maritime Spiritual Wellbeing Officer class whenever the term is used within the Principal Determination. The definition has also been amended to reflect changes to the definition of rank under the Defence Act.

Sections 2 to 4 amend section 3.2.41 of the Principal Determination which provides the increment advancement provisions for Chaplains, Maritime Spiritual Wellbeing Officers and dental officers. The sections make the following changes.

- Section 2 makes subsection 1 subject to the new subsection 1A, inserted by section 3 of this Schedule.
- Section 3 inserts subsection 1A which prevents a Maritime Spiritual Wellbeing Officer holding a class 5 classification from receiving increment advancement from 6 August 2020. 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 4 amends references within subsection 3.2.41.5.

Criteria are provided for the exercise of discretion under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the *Defence Regulation 2016*. Also, a person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Before this Determination was made, the following consultation was undertaken:

- Navy and Defence Finance Group were consulted in regards to the changes made by schedule 1 of this Determination.
- 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 were consulted in regards to the changes made by sections 2 and 3 of Schedule 3 of this Determination.

The remaining changes are technical in nature and 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*

## **Defence Determination, Conditions of service Amendment (Maritime Spiritual Wellbeing Officer and Specialist Officer) Determination 2020 (No. 14)**

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 includes Maritime Spiritual Wellbeing Officers as specialist officers for the purpose of salary administration as a consequence of the primary qualification being established by Defence Force Remuneration Tribunal Determination No. 3 of 2020, Salaries – Maritime Spiritual Wellbeing Officer – amendment.
- It amends the salary administration provisions for specialist officers to include a 'specialist level' as a criteria for the payment of salary.
- It makes amendments to senior officer increment advancement provisions consequential to changes made by Defence Determination, Conditions of service (Star rank increment advancement) Amendment Determination 2020 (No. 12). 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.

This Determination expands salary administration provisions which relate to Chaplains to include the new employment category of Maritime Spiritual Wellbeing Officer. This will ensure that Maritime Spiritual Wellbeing Officers will enter and advance through the pay structure throughout their career.

#### Schedule 3 sections 2 and 3

*Legitimate objective:* Schedule 3 sections 2 and 3 of this Determination stop 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 changes are a temporary measure to cease pay increases provided through increment advancement for senior members of the ADF. They promote the Government's policy of sharing the economic burden caused by COVID-19 pandemic and are consistent with the delay in pay rises across the Australian Public Service. Importantly, the changes do 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. The changes are consequential to changes made by Defence Determination, Conditions of service (Star rank increment advancement) Amendment Determination 2020 (No. 12).

### **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.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions