

EXPLANATORY STATEMENT

Defence Determination, Conditions of service (Reserve allowances – transitional provision) Determination 2020 (No. 27)

This Determination is 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* (Legislation Act). These instruments are also subject to the interpretation principles in the AI Act.

The purpose of this Determination is to provide revised transitional provisions for changes made to reserve allowances under Schedule 2 of Defence Determination, Conditions of service Amendment Determination 2020 (No. 13) (Determination 2020 (No. 13)). Transitional provisions were made under Schedule 8 of Determination 2020 (No. 13), however they referenced changes made under Schedule 1 instead of Schedule 2 of Determination 2020 (No. 13). This error in the schedule reference meant that the criteria provided in the transitional provisions could not be met so they did not provide any benefit. The transitional provisions provided under this Determination ensures that the criteria can be met and that the benefits are able to be provided to the member.

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

Section 2 provides that this instrument commences on the day after registration.

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

Schedule 1—Transitional provisions – Reserve allowances

Section 1 provides a definition of 'the Determination', being Defence Determination 2016/19, Conditions of service, which is incorporated into this Schedule as in force from time to time. It also provides a definition of 'Determination 2020 (No. 13)', being Defence Determination, Conditions of service Amendment Determination 2020 (No. 13).

Section 2 affects a member who becomes eligible for the Reserve capability bonus as a consequence of schedule 2 of Determination 2020 (No. 13). Normally, the Reserve Capability bonus is paid based on 12 months' service from date of the previous payment. This section sets the start date for their next 12 month period as the day on which the member would have become eligible for the payment had schedule 2 of Determination 2020 (No. 13) been in force at the time. This ensures the member is not being detrimentally affected by the amendment in respect of the payment of their next Reserve capability bonus.

Section 3 makes a payment equivalent to the health support allowance to member who were ineligible for the allowance in the 2019/20 financial year, but would have been eligible had schedule 2 of Determination 2020 (No. 13) been in force at the time. Unlike the Reserve capability bonus, Health support allowance is based on financial years. A provision has been included to ensure that any member who received a payment under section 3 of schedule 8 of Determination 2020 (No. 13) is not eligible for another payment under this provision.

Schedule 1—Transitional provisions – Reserve allowances

Section 1 revokes Defence Determination 2020 (No. 13) as made on 7 July 2020. This revocation ensures that the transitional provisions provided under schedule 8 are not incorrectly applied. Schedules 8 and 9 of Defence Determination 2020 (No. 13) provided transitional provisions which were to be applied on the date of effect of the Determination and their revocation will have no detrimental effect. The provisions within schedules 1 to 7 of Defence Determination 2020 (No. 13) amended Defence Determination 2016/19, Conditions of service, and commenced on 9 July 2020. As the provisions within schedules 1 to 7 of Defence Determination 2020 (No. 13) have already commenced the revocation of the determination does not affect these provisions.

Consultation

The changes made by this Determination 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 (Reserve allowances – transitional provision) Determination 2020 (No. 27)

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

The purpose of this Determination is to provide revised transitional provisions for changes made to reserve allowances under Schedule 2 of Defence Determination, Conditions of service Amendment Determination 2020 (No. 13) (Determination 2020 (No. 13)). Transitional provisions were made under Schedule 8 of Determination 2020 (No. 13), however they referenced changes made under Schedule 1 instead of Schedule 2 of Determination 2020 (No. 13). This error in the schedule reference meant that the transitional provisions had no effect. The transitional provisions provided under this Determination ensure that the provisions have legal effect.

Human rights implications

This Determination is technical in nature and does not engage any of the applicable rights or freedoms.

Conclusion

This Determination is compatible with human rights because it does not engage any applicable human rights or freedoms.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions