

EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Salaries and allowances modernisation) Determination 2021 (No. 5)

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* (Legislation Act). 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 2 sets out provisions dealing with joining and leaving the ADF.
- Chapter 3 sets out provisions dealing with salaries and bonuses.
- Chapter 4 sets out provisions dealing with allowances and reimbursements.
- Chapter 5 sets out provisions dealing with leave.
- Chapter 7 sets out provisions dealing with housing and meals.
- Chapter 10 sets out provisions dealing with clothing and personal effects.

The purpose of this Determination is to implement the first tranche of the ADF salaries and allowances modernisation program (modernisation program) by building a number of allowances which recognise the unique nature of military service into the member's salary. The modernisation program has been established to modernise the ADF remuneration package to support better attraction and retention of the current and future ADF workforce for sustained capability.

The first tranche of this program rolls uniform allowance provided under Chapter 10 Part 1 of the Principal Determination, and service allowance, reserve allowance and trainee allowance provided under DFRT Determination No. 11 of 2013, *ADF Allowances*, into the base salary for members of the ADF through DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*.

This Determination repeals uniform allowance and makes amendments to the Principal Determination that are consequential to the repeal of these allowances.

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

Section 2 provides that this instrument commences on 13 May 2021.

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—Salary non-reduction

Section 1 inserts a new section 3.2.59 into the Principal Determination. On 13 May 2021, some members who are on a salary non-reduction or a salary preservation under Part C of DFRT Determination No. 2 of 2017, *Salaries*, will be negatively affected with the repeal of service allowance and uniform allowance as the new rate of salary payable to the member will be lower than what the member would have received

before that date. The new section 3.2.59 provides a benefit which is the difference between the salary a member would be entitled to from 13 May 2021 had they not been on a salary non-reduction or salary preservation and the combined amounts of salary, service allowance and uniform allowance the member received before 13 May 2021. This benefit ceases when the member ceases to be eligible for salary non-reduction or salary preservation.

Schedule 2—Allowance reform and consequential amendments

Sections 1 and 2 amend section 2.3.6 of the Principal Determination which provides an additional payment for members whose service in the Permanent Forces is being terminated. Subsection 2.3.6.2 has been revised to include the provision that the additional payment amount was based on the member's salary that was previously under subsection 2.3.6.3. The new subsection provides a revised method for the calculation of the payment to reflect contemporary drafting standards. Service allowance has been removed as one of the factors used in the calculation of the payment. Subsection 2.3.6.3 has been omitted as it is no longer required.

Sections 3, 7 and 20 amend sections 2.3.23, 4.4.38 and 5.4.23 of the Principal Determination to remove reference to Service allowance. This allowance has been repealed by DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*, and the rate of the allowance has been included into the member's base rate of salary.

Section 4 inserts a new section 3.2.7AA after section 3.2.7 of the Principal Determination. The new section applies to salaries and allowances provided by determinations made the DFRT. The section provides the value of a day in a nonworking period for a member who is subject to a flexible service determination. The value for the first four days of a nonworking period in a fortnight is \$0. For any other day, the value of each day is calculated by a formula. The value is used to determine the reduction to a member's salary and DFRT allowances for a nonworking period in accordance with the relevant DFRT determinations. This change does not adversely affect the payment of salary or DFRT allowances of a member who is currently on a flexible service determination; the outcome is the same as currently provided by section 3.2.7A of the Principal Determination.

Section 5 omits and substitutes section 3.2.7A of the Principal Determination which provides a formula for calculating the daily rate of salary and allowances provided under DFRT determinations and the Principal Determination. The amendment removes reference to salary and DFRT determinations, which are provided for under section 3.2.7AA. The section has also been restructured to improve clarity and reflect contemporary drafting standards.

Section 6 omits and substitutes subsection 3.2.25.2 of the Principal Determination which provides the salary payable to a member who is undergoing recategorisation training. The subsection has been amended to remove reference to Service allowance and Reserve allowance. These allowances have been repealed by DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*, and have been included in the member's base rate of salary.

Section 8 omits and substitutes section 4.8.11 of the Principal Determination which provides an additional payment for a member who is undertaking a medical residency at a civilian hospital. The section has been amended to remove Service allowance as one of the factors used in the calculation of the payment. The section has also been rewritten to improve clarity and reflect contemporary drafting standards.

Section 9 omits and substitutes section 4.8.25 of the Principal Determination which provides an additional allowance for a member who is undertaking refresher training at a civilian hospital. The section has been amended to remove Service allowance as one of the factors used in the calculation of the payment. The section has also been rewritten to improve clarity and reflect contemporary drafting standards.

Sections 10, 12 to 19 amend a number of sections in the Principal Determination to remove reference to Reserve allowance. This allowance has been repealed by DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*, and the rate of the allowance has been included into the Reserve member's base rate of salary.

Section 11 omits section 4.9.18 from the Principal Determination which provides definitions used in Chapter 4 Part 9 Division 4. The section has been omitted as the definition of 'required to isolate' is provided under section 1.3.66A and the definition of Reserve allowance is no longer required.

Sections 21 and 22 amend section 5.4.24 of the Principal Determination which provides a member's fortnightly repayment for purchased recreation leave credits. Subsection 5.4.24.2 has been revised to include the calculation of the repayment that was previously under subsection 5.4.24.3. The new subsection provides a revised method for the calculation of the payment to improve clarity and reflect contemporary drafting standards. Service allowance has been removed as one of the factors used in the calculation of the payment. Subsection 5.4.24.3 has been omitted as it is no longer required.

Section 23 amends paragraph 7.4.38.c of the Principal Determination which provides that a member is eligible for free meals ashore when the ship's galley is not operating. This paragraph is being amended to include members on board a submarine.

Section 24 omits section 7.4.41 from the Principal Determination which provides a summary of the conditions for a member posted to a seagoing submarine. This section is not legislative in nature as the rules are provided in the relevant areas of the Principal Determination.

Section 25 omits section 7.4.49 from the Principal Determination which provides a laundry allowance for a seagoing member in temporary accommodation ashore. This allowance has been identified during the modernisation program as an allowance that is rarely utilised and is no longer required to meet Navy's capability needs. The removal of this allowance will assist in reducing the complexity in the ADF benefits package.

Section 26 omits section 7.9.12 from the Principal Determination which provides submarine food allowance for a member posted to a seagoing submarine. Submarine food allowance is a transitional food allowance payable to eligible ADF members in receipt of rent allowance or member choice accommodation whilst posted to a seagoing submarine. These members are also provided meals in the mess at Commonwealth expense. Submarine food allowance is no longer required to meet Navy's capability needs. The removal of submarine food allowance will eliminate inconsistency, and will better align the ADF benefits package with community standards.

Sections 27 and 28 amend sections 7.9.5 and 7.9.6 of the Principal Determination which provide the casual and fortnightly meal charges for member's who eat in a mess. These sections are being amended to add an additional exception which provides that a member without dependants who does not pay a contribution for living-in accommodation because they are posted to a seagoing submarine is required to pay the casual or fortnightly meal charge when dining in a mess on shore. This change aligns these members with those who are posted on board a seagoing ship.

Section 29 omits Chapter 10 Part 1 from the Principal Determination which provides uniform allowance to assist a member to maintain their uniform. The rate if the allowance has been included into the member's base rate of salary by DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*.

Sections 30 and 31 amend subsection 10.5.3.3 of the Principal Determination which provides that a member eligible for the Service police investigator plain clothes allowance is still eligible for Service provided military uniforms. This subsection is being amended to remove references to uniform allowance which has been omitted by section 29 of this Schedule.

Schedule 3—Savings and transitional provisions

Section 1 provides that a member who is undertaking basic recruit training on 12 May 2021 is eligible for the payment of uniform allowance which was payable under Chapter 10 Part 1 of the Principal Determination on 12 May 2021 until the day they complete basic recruit training. The continued payment of this allowance will ensure that members who are undertaking recruit training before the commencement of this Determination do not suffer a financial detriment when uniform allowance is repealed.

Decisions that are made under the Principal Determination, as amended by this Determination, 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

Consultation was undertaken with the Chiefs of Staff Committee, Navy, Army, Air Force, People Systems Business Analysis Branch, Defence Finance Group and Defence Tax Management Office before this Determination was made.

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

The purpose of this Determination is to implement the first tranche of the ADF salaries and allowances modernisation program (modernisation program) by building a number of allowances which recognise the unique nature of military service into the member's salary. The modernisation program has been established to modernise the ADF remuneration package to support better attraction and retention of the current and future ADF workforce for sustained capability.

The first tranche of this program rolls uniform allowance provided under Chapter 10 Part 1 of the Principal Determination, and service allowance, reserve allowance and trainee allowance provided under DFRT Determination No. 11 of 2013, *ADF Allowances*, into the base salary for members of the ADF through DFRT Determination No. 5 of 2021, *Salaries and ADF allowances – Military Salary – Amendments*.

This Determination repeals uniform allowance and makes amendments to the Principal Determination that are consequential to the repeal of these allowances.

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 repeals uniform allowance and makes consequential amendments upon the repeal of service allowance, reserve allowance and trainee allowance by the Defence Force Remuneration Tribunal. The member's salary payable has been adjusted to include the rate that was formally payable under these allowances and these changes engage Article 7 to ensure that members receive just and favourable remuneration.

By including these allowances into the member's salary it increases the amount of salary which is superannuable which then strengthens the member's financial position on retirement.

Conclusion

This Determination is compatible with human rights because it advances the protection of human rights.

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions