

EXPLANATORY STATEMENT

Issued by authority of the Chief of the Defence Force

Defence Act 1903

Defence (Payments to ADF Cadets) Determination 2023

The instrument is made under subsection 62B(1) of the *Defence Act 1903* (the Act). The instrument commences on the day after the instrument is registered and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Purpose

The ADF Cadets is a community-based youth development program supporting 13 to 18 year-olds through activities focused on Defence customs, traditions and values that help them thrive in a team environment, improve communication skills, and become responsible members of the local community. Part V of the Act establishes the Australian Defence Force Cadets (ADF Cadets), which consists of people who have volunteered and been accepted by the Chief of the Defence Force (CDF) as officers, instructors or cadets in the Australian Army, Navy and Air Force Cadets.

The CDF, as the administrator of the ADF Cadets program, has the authority to make determinations by legislative instrument that provide for payments or other pecuniary benefits to or for:

- officers of cadets;
- instructors of cadets;
- members of the families of officers, instructors and cadets

Payments or benefits are made by way of grants, honoraria, payments for expenses or other means. A determination made by the CDF can also provide for the recovery of any part of the financial assistance provided under the determination.

The *Defence (Payments to ADF Cadets) Determination 2023* repeals the *Defence (Payment to ADF Cadets) Determination 2022* (the 2022 Determination). The new determination replicates the arrangements in the 2022 Determination for payments in respect of ADF Cadets, including flexibility around capacity to make payments to cover costs in exceptional circumstances.

As part of the Defence Strategic Review implementation, the authorised person to maintain policy in relation to ADF Cadets is changing from the Chief of Joint Capabilities to the Chief of Personnel.

The CDF has amended the directions in this determination to enable the Chief of Personnel to approve payment amounts under section 7, make decisions under section 9 and authorise persons to make certain decisions under section 10 of this determination.

Details of the instrument

Details of the instrument are set out in **Attachment A**.

Consultation

Consultation with the Military Personnel Organisation, Joint Support Services Division, the ADF Cadet Organisations, and Defence Legal has occurred during the remaking of this instrument and other relevant documents.

The Office of Impact Analysis was consulted in relation to this instrument and confirmed that a regulation impact analysis was not required for this instrument (OIA23-05810).

Parliamentary scrutiny etc.

The instrument is subject to disallowance under section 42 of the Legislation Act.

A Statement of Compatibility with Human Rights has been prepared in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement provides that the instrument is compatible with human rights because it promotes the protection of human rights. The Statement is included at **Attachment B**.

The instrument is made by General Angus J. Campbell AO, DSC, Chief of the Defence Force, in accordance with the requirements of subsection 62B(1) of the Act.

Details of the *Defence (Payments to ADF Cadets) Determination 2023*

Section 1 Name

This section provides that the name of the instrument is the *Defence (Payments to ADF Cadets) Determination 2023*.

Section 2 Commencement

This section provides that the instrument commences the day after the instrument is registered.

Section 3 Authority

This section provides that the instrument is made under subsection 62B(1) of the Act.

Section 4 Definitions

This section sets out the meaning of certain definitions used in this instrument, which relevantly include:

- **authorised person** has the meaning given by section 10
- **daily amount** means an amount payable in respect of participation in an activity of the ADF Cadets for all or part of a day

Section 5 Schedules

Section 5 provides that each instrument specified in a Schedule to the instrument is amended or repealed in accordance with the items in the Schedule. The only instrument specified in the Schedule is the *Defence (Payments to ADF Cadets) Determination 2022*, which is repealed.

Section 6 Eligibility for payments

Subsection 6(1) provides that an officer or instructor of ADF Cadets may apply for a payment where they participate in an ADF Cadet activity. This application needs to be in writing to an authorised person. The officer or instructor will not be paid unless they make an application.

Subsection 6(2) provides that an officer or instructor of ADF Cadets must apply for payment before the end of the calendar month immediately following the month in which the ADF cadet activity occurred (the **relevant calendar month**). For example, if an officer or instructor undertook ADF cadet activity on 15 March 2024, they would have until the end of the day of 30 April 2024 to make a written application under subsection 6(1) of the instrument.

Subsection 6(3) provides that, despite the requirements of subsection 6(2), an authorised person may approve an officer or instructor in the ADF Cadets to make an application under subsection 6(1) after the end of the relevant calendar month. This provision ensures that there is a mechanism to consider applications made outside of the required timeframe, accounting for circumstances where an applicant may be unable to meet the application time requirements.

Subsection 6(4) provides that the Chief of Personnel may, by notifiable instrument, determine any other matters in connection with the eligibility of members of the ADF or ADF Cadets for payments. The Chief of Personnel is broadly responsible for the administration of payments under this scheme. As part of administering this scheme, Chief of Personnel requires the capability to set out criteria as to when certain classes of people will or will not be eligible for a payment.

Section 7 Amount of payments

Section 7 sets the circumstances when an application is made in respect of a cadet activity that the daily amount payable and other amounts is no more than the amount approved by the Chief of Personnel. The provision specifies that the approved amounts are to be set out in a notifiable instrument made by the Chief of Personnel.

This document will continue to be treated as a notifiable instrument published on the Federal Register of Legislation and will also be published on www.cadetnet.gov.au on the day this instrument commences.

Section 8 Recovery of amounts paid

Section 8 provides for the recovery of an overpayment where a payment is made to cover the anticipated expenses of ADF Cadet activities, but those expense are not incurred.

Section 9 Other benefits

Subsection 9(1) provides for payment of other expenses in exceptional circumstances (e.g. a medical emergency, bereavement, or other expenses arising from an accident or incident occurring at an approved ADF Cadet activity). The subsection requires the decision maker to be satisfied that there are exceptional circumstances, and payments may be made in relation to cadets, officers and instructors of cadets and other adult volunteers.

Subsection 9(2) provides that the amount to be paid may be set by the decision maker.

Subsection 9(3) lists the decision makers who can determine if exceptional circumstances exist, and what amount may be paid. The list of decision makers now includes the Chief of Personnel.

Decision makers should note that the provision is not intended to apply to payment of other expenses that are already met by other means, including but not limited to Defence insurance arrangements or through Medicare or Private Health Insurance.

Section 10 Authorised persons

Section 10 gives authority to the Chief of Personnel to, by notifiable instrument, authorise certain persons to make discretionary decisions in relation payments as prescribed in section 6 of the instrument.

Schedule 1 Repeals

Schedule 1 provides that the *Defence (Payments to ADF Cadets) Determination 2022* is repealed.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Defence (Payments of ADF Cadets) Determination 2023

This Disallowable Legislative Instrument 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 Disallowable Legislative Instrument

The Chief of the Defence Force, as the administrator of the Australian Defence Force Cadets program, has the authority (under section 62B of the *Defence Act 1903*) to make determinations by legislative instrument that provide for payments or other pecuniary benefits to or for officers of cadets, instructors of cadets, or in respect of members of the families of officers, instructors and cadets by way of grants, honoraria, payments for expenses or other means.

The purpose of this Disallowable Legislative Instrument is to determine the payment of allowances and other pecuniary benefits to or for officers of cadets, instructors of cadets or in respect of members of the families of officers, instructors and cadets.

Human rights implications

Children's freedom of peaceful assembly

This Disallowable Legislative Instrument engages with article 15 of the International Covenant on the Rights of the Child. This article recognises the rights of the child to freedom of expression and peaceful assembly.

As a youth development organisation, the ADF Cadets program brings together people who provide activities in which children and young adults can participate and develop a sense of and appreciation of their community.

ADF Cadets payment is a partial payment made as an honorarium, to assist officers and instructors of cadets in those activities. It is not claimed for all activities and is not claimed regularly or at all by significant numbers of officers and instructors. This Disallowable Legislative Instrument provides further information about the procedural incentive to ensure that claims are proximate to the activity they assist with, and makes clear that the payment is an honorarium for activities that are voluntarily performed by officers and instructors of ADF Cadets.

Giving clear information about the nature of benefits provided for these officers and instructors is helpful to ensure transparency and manage expectations of individuals.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.