EXPLANATORY STATEMENT

Defence Determination 2016/11

This Determination amends Defence Determination 2005/15, Conditions of service (the Principal Determination), made under section 58B of the Defence Act 1903 (the Defence Act) and in accordance with subsection 33(3) of the Acts Interpretation Act 1901 (AIA Act). Determinations made under section 58B of the Defence Act are disallowable non-legislative instruments and are subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act.

Chapter 3 of the Principal Determination sets out provisions dealing with salary administration for members of the Australian Defence Force (ADF).

The purpose of this Determination is to bring forward the closure of the recruit instructor bonus scheme in the Principal Determination, to coincide with the commencement of the two new DFRT allowances introduced by the Defence Force Remuneration Tribunal (DFRT) Determination No. 15 of 2015, ADF Allowances – Recruit Instructor – Amendment. The early closure of the previous Army – 1st Recruit Training Battalion recruit instructors scheme provided for under the Principal Determination will mean that eligible members will receive a pro rated payment following 9 March 2016 for their completed service, in accordance with paragraph 3.5.221.i of the Principal Determination.

Members who were eligible for the recruit instructors scheme at Chapter 3 Part 5 Division 22 of the Principal Determination will meet the eligibility criteria under the new recruit instructors disability allowance and recruit instructor sustainability allowance introduced by the DFRT. The two new DFRT allowances together yield a higher rate of payment to the member than under the recruit instructors scheme.

This Determination also adds references to the two new DFRT allowances in an administrative table in the Principal Determination.

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

Clause 2 of this Determination provides that the Determination commences on 10 March 2016 to coincide with the commencement of DFRT Determination No. 15 of 2015, ADF Allowances – Recruit Instructor – Amendment.

Clause 3 specifies that the amendment is made to the Principal Determination, as amended.

Clause 4 of this Determination substitutes the table in paragraph 3.2.7.3.a of the Principal Determination, with an updated table that includes recruit instructor disability allowance and recruit instructor sustainability allowance.

Clause 5 of this Determination amends the closure date of the Army – 1st Recruit Training Battalion recruit instructors scheme in subclause 3.5.216.2 of the Principal Determination. As a result of the introduction of the two new allowances for Army recruit instructors introduced by the Defence Force Remuneration Tribunal on 10 March 2016, the closure date of the recruit instructor scheme under the Principal Determination has been brought forward from 30 June 2016 to 9 March 2016. Recruit instructors disability allowance and recruit instructor sustainability allowance introduced by the DFRT compensate eligible members for the same disabilities covered by the previous Army – 1st Recruit Training Battalion recruit instructors scheme.

Criteria are provided for the exercise of discretions under the Principal Determination, as amended by this Determination. Adverse decisions may be subject to inquiry under the ADF redress of grievance system. A person may make a complaint to the Defence Force Ombudsman.

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 2016/11, Recruit instructors – amendment

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 bring forward the closure of the recruit instructor bonus scheme in the Principal Determination, to coincide with the commencement of the two new allowances introduced by the Defence Force Remuneration Tribunal Determination No. 15 of 2015, ADF Allowances – Recruit Instructor – Amendment. This Determination also adds references to the two new allowances in an administrative table in the Principal Determination.

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.

The Australian Defence Force provides members with allowances to compensate for the special demands of service life to the extent that they are not fully compensated by the payment of on-occurrence allowances, additional leave or other benefits.

Defence Force Remuneration Tribunal Determination No. 15 of 2015, ADF Allowances – Recruit Instructor - Amendment, introduced two new allowances that replace the aging recruit instructor bonus scheme provided under section 58B of the Defence Act 1903. The two new allowances together yield a higher rate of payment to the ADF member than under the recruit instructors scheme.

Conclusion

This Determination is compatible with human rights as it does not raise any human rights issues.

John William Geering, Director General People Policy and Employment Conditions