EXPLANATORY STATEMENT

Defence Determination 2016/13

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 legislative instruments subject to the Legislation Act 2003. These instruments are also subject to the interpretation principles in the AIA Act, as modified by section 58B of the Defence Act.

Chapter 17 of the Principal Determination sets out provisions dealing with warlike and non-warlike deployments for members of the Australian Defence Force (ADF) and Australian Public Service (APS) employees.

The purpose of this Determination is to adjust the operational area for Operation MANITOU.

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 the date of registration.

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

Clause 4 adjusts table item 2 in clause 17.9.6 to reflect the new specified operational area for Operation MANITOU. Clause 17.9.6 provides the rate of allowance which is payable for each operation and the specified area for that operation. On 21 December 2015, the Assistant Minister for Defence decided to extend the specified area for Operation MANITOU.

Clause 5 provides a transitional payment for members who were deployed on Operation MANITOU between 14 May 2015 and the commencement date of this Determination. The transitional provides that members who were deployed on Operation MANITOU in the extended specified area between 14 May 2015 and the commencement of this Determination receive the relevant rate of deployment allowance for any day they performed duty in the extended specified area.

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.

The retrospective application of this Determination does not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such person.

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 2016/13, Deployment allowance – 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 adjust the operational area for Operation MANITOU.

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.

Legitimate objective: Defence members may be required to perform duty in overseas locations which are areas of military conflict. Defence members who are deployed to some overseas locations will experience adverse conditions during service. These members are compensated for conditions that can include but are not limited to hazard, stress, climate, health care facilities, infrastructure and isolation.

Reasonable, necessary and proportionate: Defence requires its members to perform duty in these locations and therefore provides additional benefits, beyond the normal overseas conditions of service. Deployment allowance is a disability allowance that helps financially to compensate members for the conditions they encounter while on deployment.

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.

Tyson Paul Sara, Director General People Policy and Employment Conditions