EXPLANATORY STATEMENT

Defence Determination, Conditions of Service Amendment (Salary non-reduction) Determination 2018 (No. 20)

This Determination amends Defence Determination 2016/19, 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.

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 2003. 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 2003.

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

The purpose of this Determination is to provide salary non-reduction provisions for Army, Military Police Pay Grade 1 employment category, Military Police Pay Grade 2 employment category and Army, Engineer Pay Grades 3, 4, 5, 6 and 7 employment categories. The provisions ensure current members’ salaries are not reduced as a consequence of the restructure of their employment category.

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

Section 2 provides that this instrument commences on 17 May 2018.

Section 3 provides that this instrument has authority under section 58B of the Defence Act 1903.

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 amends Defence Determination 2016/19, Conditions of service

On 16 November 2016, the pay placements of Military Police were restructured. Affected members are covered under the non-reduction provisions in subsection 3.2.52.3 of the Principal Determination until 17 May 2018. In order to provide the affected members with the opportunity to meet the new requirements associated with the restructure, a further salary non-reduction provision will be provided until 17 November 2018 to ensure that the members' rate of salary is maintained for the period.

- Section 1 inserts a salary non-reduction period for the Military Police Grade 1 employment category.
- Section 2 inserts a salary non-reduction period for the Military Police Grade 2 employment category.

Section 3 inserts a salary non-reduction period for the Engineer Officer Employment Category. In July 2018 Army will be restructuring the Engineer Survey Employment Category with Royal Australian Engineers (RAE) Officers being compulsorily transferred to the Australian Intelligence Corps. The affected employment categories include Engineer Officer – Engineering Officer Grade 3 (Pay grade 3), Grade 4 (Pay grade 4), Grade 5 (Pay grade 5), Grade 6 (Pay grade 6) and Grade 7 (Pay grade 7). As RAE Engineers are paid at a higher rate than the Australian Intelligence Corps., the affected members are provided with the opportunity to meet the new requirements associated with the restructure. The salary non-reduction period provides salary protection for members until 1 July 2021 so they are not adversely affected by the compulsory transfer.
Consultation

Navy, Army and Air Force were consulted and agreed to the changes made by this Determination. No external consultation was undertaken in accordance with section 17 of the *Legislation Act 2003* as the amendment is of a minor or machinery nature and does not substantially alter existing arrangements.

**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

This Determination makes technical amendments to Defence Determination 2016/19, Conditions of service.

The purpose of this Determination is to provide salary non-reduction provisions for Army, Military Police Pay Grade 1 employment category, Military Police Pay Grade 2 employment category and Army, Engineer Pay Grades 3, 4, 5, 6 and 7 employment categories. The provisions ensure current member's salaries are not reduced as a consequence of the restructure of their employment category.

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: This Determination advances the specific rights in articles 7(a) and 7(c). It ensures that ADF members who are categorised as Military Police, Pay Grade 1 (Army) and Military Police, Pay Grade 2 (Army) and Army Engineer Pay Grades 3, 4, 5, 6, and 7 maintain their level of remuneration based on their qualifications and skills while undergoing re-categorisation.

Reasonable, necessary and proportionate: The requirement to serve a specified period of time and gain certain qualifications to be eligible for salary advancement or promotion is consistent with the remuneration right provided by articles 7(a) and 7(c) of this covenant.

On 16 November 2016, the employment categories of Military Police Pay Grade 1 and Military Policy Pay Grade 2 were restructured. A salary non-reduction provision has been provided for the affected members to ensure that their rate of salary is maintained while they are given the opportunity to meet the new requirements of the restructure.

On 1 July 2018, selected members of the Royal Australian Engineers (RAE) Corps will be transferred to the Australian Intelligence Corps. The affected members will be given the opportunity to retrain to meet the requirements of the new employment category. A salary non-reduction provision will be provided until 1 July 2021 to ensure that the members' rate of salary is maintained for the period of their retraining in the new employment category.

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