EXPLANATORY STATEMENT

Defence Determination, Conditions of service Amendment (Employment categories salary non-reduction) Determination 2019 (No. 33)

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 (AI 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 AI 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 Chapter 3 of the Principal Determination which sets out the conditions for salaries and bonuses for members of the Australian Defence Force (ADF).

The purpose of this Determination is to provide a salary non-reduction period for a member of the Army Reserve Construction Engineers employment category who is a carpenter, electrician or plumber, a member of the Army who is a Geomatic Technician, and a member of the Navy Electronic Warfare Submarines employment category who is a submariner.

The retrospective effect of certain table items in schedule 1 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 a person. References to dates before the commencement of this Determination reflect the dates in the Principal Determination and have been omitted and reinserted by this Determination.

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

Section 2 provides that this instrument commences on 14 November 2019.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 amendment

Sections 1 and 2 amend Pay grade 4 in the table in Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) together with the commencement date of the salary non-reduction period and the date that the period ends. The following new employment categories have been inserted into the table.

- Carpenter Grade 2, Electrician Grade 2 and Plumber Grade 2, each with a commencement date of 28 November 2019. The salary non-reduction period enables an affected member to be remunerated at their current rate of salary until 27 November 2024, providing sufficient time for the member to obtain the relevant training required to advance to a rate of salary higher than their current rate.

- Geomatic Technician Grade 2 with a commencement date of 1 July 2018. The salary non-reduction period enables an affected member to be remunerated at their current rate of salary until 30 June 2021, providing sufficient time for the member to obtain the relevant training required to advance to a rate of salary higher than their current rate.

Section 3 inserts a new table item 27A into the table in Annex 3.2.B of the Principal Determination. The Annex sets out the relevant pay grade, employment category and conditions (if any) together with the commencement date of the salary non-reduction period and the date that the period ends. The new employment category of Geomatic Technician Grade 4 has been inserted into the table for Pay grade 5, with a commencement date of 1 July 2018. The salary non-reduction period enables an affected member
to be remunerated at their current rate of salary until 30 June 2021. It provides sufficient time for the
member to obtain the relevant training required to advance to a rate of salary higher than their current
rate. The date of 1 July 2018 is retrospective to ensure that the affected member is not disadvantaged.

Section 4 inserts a new table item 34A into the table in Annex 3.2.B of the Principal Determination. The
Annex sets out the relevant pay grade, employment category and conditions (if any) together with the
commencement date of the salary non-reduction period and the date that the period ends. The new
employment category of Geomatic Technician Grade 6 has been inserted into the table for Pay grade 6,
with a commencement date of 1 July 2018. The salary non-reduction period enables an affected member
to be remunerated at their current rate of salary until 30 June 2021. It provides sufficient time for the
member to obtain the relevant training required to advance to a rate of salary higher than their current
rate. The date of 1 July 2018 is retrospective to ensure that the affected member is not disadvantaged.

Section 5 inserts a new table item 56 into the table in Annex 3.2.B of the Principal Determination. The
Annex sets out the relevant pay grade, employment category and conditions (if any) together with the
commencement date of the salary non-reduction period and the date that the period ends. The new
employment category of Electronic Warfare Submarines – SM Skill Grade 2 has been inserted into the
table for Pay grade 8, with a commencement date of 24 January 2019. The salary non-reduction period
enables an affected member to be remunerated at their current rate of salary until 23 January 2021. It
provides sufficient time for the member to obtain the relevant training required to advance to a rate of
salary higher than their current rate. The date of 24 January 2019 is retrospective to ensure that the
affected member is not disadvantaged.

Consultation

The Defence Force Remuneration Tribunal, Navy, Army and Air Force were consulted in the making of
this Determination.

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

Defence Determination, Conditions of service Amendment (Employment categories salary non-reduction) Determination 2019 (No. 33)

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 provide salary non-reduction for a member of the Army Reserve Construction Engineers employment category who is a carpenter, electrician or plumber, a member of the Army who is a Geomatic Technician, and a member of the Navy Electronic Warfare Submarines employment category who is a submariner.

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.

Salary non-reduction

This Determination ensures the following.

- That a member of the Army Reserve Construction Engineers who is a carpenter, electrician or plumber in Pay grade 4, maintains their level of remuneration based on their qualifications and skills.
- That a member of the Army who is a Geomatic Technician, in Pay grades 4, 5 and 6, maintains their level of remuneration based on their qualifications and skills.
- That a member of the Navy who is an Electronic Warfare Submarine sailor at skill grade 2 in Pay grade 8 has the opportunity to complete the requirements to progress to the new skill grade 4 in Pay grade 8 while maintaining their level of remuneration based on their qualifications and skills.

Reasonable, necessary and proportionate: This Determination inserts the following.

- A salary non-reduction period from 28 November 2019 to 27 November 2024 for Army Reserve Construction Engineers who were remunerated under Pay grade 4.
- A salary non-reduction period from 1 July 2018 to 30 June 2021 for Army Geomatic Technicians who were remunerated under Pay grades 4, 5 and 6.
- A salary non-reduction period from 24 January 2019 to 23 January 2021 for Navy Electronic Warfare Submarine sailors who were remunerated under Pay grade 8.

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