# EXPLANATORY STATEMENT

## Defence Determination 2017/39

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.

This purpose of this Determination is to provide salary non-reduction provisions for Army, Commando Pay Grade 4 employment category and Navy's Maritime Logistics Personnel Operations, Pay Grade 2 employment category to ensure current members' salaries are not reduced as a consequence of the restructure of their employment category.

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

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

Section 2 provides that this instrument commences on the day after registration.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Schedule 1 makes the following changes to Part 2 of Annex 3.2.B of the Principal determination which lists salary non-reduction periods applicable to members whose salary rate has been preserved for a period when it would otherwise have been reduced.

* Section 1 inserts a salary non-reduction period for the Commando Grade 4 employment category that was excluded from the previous amendments to Annex 3.2.B of the Principal Determination as an anomaly. On 18 December 2014, the employment category of Commando Grade 4 ceased to be an employment category as determined by the Defence Force Remuneration Tribunal. The affected members were given the opportunity to retrain for a new employment category or trade. However, a salary non-reduction provision was provided to ensure that their rate of salary was maintained for the period of their retraining in the new employment category. This amendment corrects the anomaly and extends the salary non-reduction period to 17 December 2019 to allow the remaining former Army Commando Grade 4 members to finish their retraining for their new employment category.
* Section 2 inserts a salary non-reduction period for the Maritime Logistics Personnel Operations Grade 2 employment category. On 8 March 2018, the employment category of Maritime Logistics Personnel Operations Grade 2 will cease to be an employment category. The affected members will be given the opportunity to retrain for a new employment category or trade. A salary non-reduction provision will be provided until 7 March 2021 to ensure that the member's rate of salary is maintained for the period of their retraining in the new employment category.

Schedule 2 - Transitional provisions for the changes made by Schedule 1 of this Determination

Section 1 provides a transition rate of salary for members who were in the employment category of Army, Commando Grade 4 on 17 December 2014, in receipt of salary at pay grade 8, and who were performing duty in the employment category of Army, Commando Grade 4 between 17 December 2014 and the date of commencement of this Determination.

This transitional provision is to address the anomaly which was identified in Annex 3.2.B of the Principal Determination affecting members in the Commando Grade 4 employment category.

**Consultation**

Navy and Army 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*

**Defence Determination 2017/39, Salary non-reduction – 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 provide salary non-reduction provisions for Army, Pay Grade 4 Commando employment category and Navy's Maritime Logistics Personnel Operations, Pay Grade 2 employment category to ensure current members' 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, particularly remuneration and equal opportunity to be promoted to a higher level.

*Legitimate objective:* This Determination advances the specific rights in articles 7(a) and 7(c). It ensures that ADF members who are categorised as Commando, Pay Grade 4 (Army) and Maritime Logistics Personnel Operations, Pay Grade 2 (Navy) 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 18 December 2014, the employment category of Commando Grade 4 ceased to be an employment category. The affected members have been given the opportunity to retrain for a new employment category or trade. A salary non-reduction provision has been provided to ensure that their rate of salary is maintained for the period of their retraining in the new employment category. This amendment corrects the anomaly identified in Annex 3.2.B of the Principal Determination and extends the salary non-reduction period to 17 December 2019 to allow the remaining former Army Commando Grade 4 members to finish their retraining for their new employment category.

On 8 March 2018, the employment category of Maritime Logistics Personnel Operations Grade 2 will cease to be an employment category. The affected members will be given the opportunity to retrain for a new employment category or trade. A salary non-reduction provision will be provided until 7 March 2021 to ensure that the member's 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.

Phillip John Hoglin, Acting Assistant Secretary People Policy and Employment Conditions