# EXPLANATORY STATEMENT

## Defence Determination, Conditions of Service Amendment (Bonus Framework) Determination 2018 (No. 41)

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.

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

The purpose of this Determination is to include the Chief of the Defence Force (CDF) as an approving authority for bonuses under Chapter 3 Part 5 Division 2 of the Principal Determination. In addition to the Service Chiefs, this will enable the CDF to approve bonuses for members, resulting in greater flexibility.

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

Section 2 provides that this instrument commences on 29 November 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 – Amendment to Defence Determination 2016/19, Conditions of Service*

Section 1 amends section 3.5.6 of the Principal Determination which provides the conditions a member must meet to be eligible for a bonus under the section. Reference to the Service Chief has been removed as the authority to make an officer is provided under subsection 3.5.8.2.

Section 2 omits and substitutes section 3.5.8 of the Principal Determination, which provides who can determine the amount of the bonus, as well as the period of service the member must undertake to receive the bonus. The section has been amended to include the CDF as a position which can determine the amount and period of service applicable to a bonus. The Chief of Staff – ADF Headquarters, Director General Navy People, Director General Personnel – Army, and Director General Personnel – Air Force have been included as a positions who can offer of a bonus determined by the CDF to a member.

Section 3 amends section 3.5.9 of the Principal Determination, which provides the factors which must be considered when offering a member a bonus. The section has been amended to include the CDF as a position which must consider the listed factors before making an offer of a bonus.

Section 4 amends subsection 3.5.11.1 of the Principal Determination, which provides how long a member has to accept an offer of a bonus. Paragraph c has been amended to provide that the CDF can determine a period that he or she feels is reasonable for the member to accept the bonus they have been offered.

Section 5 amends subsection 3.5.14.1 of the Principal Determination, which provides the reasons a member is not required to repay a bonus if they have failed to complete their agreed period of service. The provision provides that a member's Service Chief can determine that the member's reason for ceasing to serve was beyond the member's control. The CDF has been added as a position who can determine this.

**Consultation**

Before the determination was made, consultation was under taken with the Directorate of Senior Officer Management – ADF, Defence People Group. 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 (Bonus Framework) Determination 2018 (No. 41)**

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 include the Chief of the Defence Force (CDF) as an approving authority for bonuses under Chapter 3 Part 5 Division 2 of the Principal Determination. In addition to the Service Chiefs, this will enable the CDF to approve bonuses for members resulting in greater flexibility.

**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.

Providing an additional approving authority for determining and offering retention bonuses to Australian Defence Force members does not limit any of the applicable rights or freedoms.

**Conclusion**

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions