

# EXPLANATORY STATEMENT

## Defence Determination, Conditions of Service Amendment (Salary non-reduction) Determination 2018 (No. 42)

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.

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 to be adopted in this determination as in force from time to time.

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

This Determination has the following purposes.

- To extend a salary non-reduction period for members of the Reserves in the employment categories 'Operator Radar' and 'Manager Surveillance Target Acquisition'.
- To provide a salary non-reduction period for members of the Permanent Forces in one of several Army employment categories that were discontinued after a restructure in November 2016. A transitional provision preserves these members' salaries up to the commencement of 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 27 December 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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 – Amendments to Defence Determination 2016/19, Conditions of Service – salary non-reduction

Sections 1 to 3 and 12 amend Annex 3.2.B of the Principal Determination, which sets periods of salary preservation for a member ranked Warrant Officer Class 1 or lower, whose salary would otherwise be reduced for reasons such as pay grade restructures and employment category transfers. The salary non-reduction period for employment category 'Manager Surveillance Target Acquisition' has been extended for members of the Reserves by two years to 31 December 2020. This is because the members have not had the opportunity to complete their transition due to administrative issues that were no fault of their own. The extension of the preservation period is expected to provide affected members with time for advancement or promotion and therefore eligible for a rate of salary greater than before their employment category was discontinued.

Sections 4 to 11 amend Part 2 of Annex 3.2.B of the Principal Determination, which sets periods of salary preservation for a member ranked Warrant Officer Class 2 or lower, whose salary would otherwise be reduced for reasons such as pay grade restructures and employment category transfers. The salary non-reduction period for members of the Reserve in employment category 'Operator Radar' (various skill and pay grades) has been extended by two years to 31 December 2020. This is because the members have not had the opportunity to complete their transition due to administrative issues that were no fault of their own. The extension is expected to provide affected members with time for advancement or promotion and therefore eligible for a rate of salary greater than before their employment category was discontinued.

Section 12 inserts three new table items 36, 36A and 36B into Annex 3.2.B Part 2 of the Principal Determination, which sets periods of salary preservation for a member ranked Warrant Officer Class 2 or lower, whose salary would otherwise be reduced for reasons such as pay grade restructures and employment category transfers. Three employment categories discontinued as a result of a restructure on 16 November 2016, and salary non-reduction provisions, are added to the Annex for members ranked Sergeant at pay grade 6. An affected member's salary is preserved in the following ways.

- Section 3.2.52 of the Principal Determination preserves the member's salary for the first 18 months (16 November 2016 to 16 May 2018).
- Schedule 2 of this Determination preserves the member's salary from the expiration of the initial 18 month period to the commencement of this Determination (17 May 2018 to 27 December 2018).
- Section 12 of this determination provides a non-reduction period from the commencement of this Determination to four years from the date the employment category was discontinued. (27 December 2018 to 17 November 2020).

The four year non-reduction period is expected to provide affected members with time for advancement or promotion and therefore eligible for a rate of salary greater than before their employment category was discontinued.

Section 12 also extends the salary non-reduction period for employment category 'Manager Surveillance Target Acquisition' (table item 36C) for members of the Reserves by two years to 31 December 2020.

#### *Schedule 2 – Defence Determination 2016/19, Conditions of Service – salary non-reduction transitional provision*

Section 1 provides a transitional provision for members in employment categories 'Manager Operations Ground Based Air Defence' and 'Manager Operations Offensive Grade 2' which were discontinued on 16 November 2016. The transitional provision preserves an affected member's salary from the 17 May 2018 to the commencement of this Determination. The member's salary was preserved for the first 18 months by provisions under section 3.2.52 of the Principal Determination (16 November 2016 to 16 May 2018).

The transitional provision does not include the employment category 'Manager Surveillance Target Acquisition' because it was included in the Annex for the duration of the transitional period.

### **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*

## **Defence Determination, Conditions of Service Amendment (Salary non-reduction) Determination 2018 (No. 42)**

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*.

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- To provide a salary non-reduction period for members of the Permanent Forces in one of several Army employment categories that were discontinued after a restructure in November 2016. A transitional provision preserves these members' salaries up to the commencement of this Determination.

### **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 whose employment categories were discontinued as a result of a restructure, 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 'Manager Operations Ground Based Air Defence', 'Manager Operations Offensive Grade 2' and 'Manager Surveillance Target Acquisition' were restructured. A four year salary non-reduction provision is provided for the affected members to ensure that their rate of salary is maintained while they are given time for advancement or promotion and therefore eligible for a rate of salary greater than before their employment category was discontinued.

Members of the Reserves in employment categories 'Manager Surveillance Target Acquisition' and 'Operator Radar' were provided a three year salary non-reduction period, however, due to administrative issues and no fault of their own, have not had the opportunity to complete their transition. This Determination extends the salary non-reduction period a further two years.

A transitional provision preserves the members' salaries at the rate payable to them immediately before their employment category was discontinued, up to the commencement of this Determination.

### **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