

Explanatory Statement

Defence (Payments to ADF Cadets) Determination 2019

Section 62B of the Defence Act 1903

The Chief of the Defence Force (CDF), as the administrator of the Australian Defence Force Cadets program (ADF Cadets), has the authority to make determinations by legislative instrument that provide for payments or other pecuniary benefits to or for officers of cadets, instructors of cadets, or in respect of members of the families of officers, instructors and cadets by way of grants, honoraria, payments for expenses or other means. A determination made by the CDF can also provide for the recovery of any part of the financial assistance provided under the determination.

Previously CDF directed the Vice Chief of the Defence Force to establish policy requirements that apply to the ADF Cadets, and this direction was reflected in the *Defence (Payments to ADF Cadets) Determination 2016* (2016 Determination). Under a new administrative arrangement to take effect on 29 January 2019, the CDF has now directed the Chief of Joint Capabilities to issue and maintain the policy requirements that apply the ADF Cadets.

The *Defence (Payments to ADF Cadets) Determination 2019* repeals the 2016 Determination to reflect the new administrative arrangement. The remade instrument sets out the authority and conditions for payments and other pecuniary benefits to or for officers of cadets, instructors of cadets, or in respect of members of the families of officers, instructors and cadets.

Transitional arrangements have been included in the *Defence (Payments to ADF Cadets) Determination 2019* to ensure outstanding applications for payments prior to the repeal of the 2016 Determination are managed appropriately.

Name of the instrument

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

Commencement

Section 2 provides that the Instrument commences on 29 January 2019.

Authority

Section 3 provides that this Instrument is made under the authority of subsection 62B(1) of the *Defence Act 1903*.

Definitions

Section 4 provides definitions applicable to the Instrument.

Schedules

Section 5 provides for the repeal of the *Defence (Payment to ADF Cadets) Determination 2016*.

Eligibility for payments

Section 6(1) provides that an ADF Cadets officer/instructor may apply for a payment where they participate in an ADF Cadet activity. This application needs to be in writing to the authorised person. They will not be paid unless they make an application.

Sections 6(2) and (3) provide that an ADF Cadets officer/instructor is eligible for no more than 48 days of payment per financial year for ADF cadet activities. An ADF Cadets officer/instructor must apply to the authorised person for approval of payment where in excess of 48 days is required.

Section 6(4) and (5) provide that an ADF Cadets officer/instructor must apply for payment before the end of the following calendar month that the ADF cadet activity occurred. An ADF Cadets officer/instructor must apply to the authorised person for approval of a late application.

Amount of payments

Section 7 sets the circumstances when an application is made in respect of a cadet activity that the daily amount payable and other amounts is no more than the amount approved by the Chief of Joint Capabilities. The provision also specifies that the approved amounts are to be set out in a document signed by the Chief of Joint Capabilities. This document will be treated as a notifiable instrument published on the Federal Register of Legislative Instrument (FRLI) and will also be published on www.cadetnet.gov.au on the day this instrument commences.

Recovery of amounts paid

Section 8 provides for the recovery of an overpayment.

Other benefits

Section 9 sets out circumstances for the payment of other benefits in exceptional circumstances (e.g. in a medical emergency).

Authorised persons

Section 10 gives authority to certain persons as ‘authorised persons’ to make discretionary decisions in relation payments as prescribed in this instrument. Under section 10, the Chief of Joint Capabilities authorises persons to make these discretionary decisions in relation to the payments prescribed.

Transitional Provisions

Section 11(1) provides that applications for payment made before the commencement day are treated like applications made under the new determination. Section 11(2) provides that notifiable instruments made by VCDF under the 2016 Determination have effect as if made by the Chief of Joint Capabilities under the new determination. Section 11(3) provides that authorised persons under the 2016 Determination continue as authorised persons under the new determination.

Legislative Instrument

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

This instrument commences on 29 January 2019 in line with the new administrative arrangement for the ADF Cadets.

Consultation

Consultation with the Head Reserve and Youth Division and Defence Legal has occurred during the remaking of this Instrument and other relevant documents.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Defence (Payments of ADF Cadets) Determination 2019

This Instrument 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 Instrument is to determine the payment of allowances and other pecuniary benefits to or for officers of cadets, instructors of cadets or in respect of members of the families of officers, instructors and cadets.

Human Rights implications

Children's freedom of peaceful assembly

This Instrument engages with article 15 of the International Covenant on the Rights of the Child. This article recognises the rights of the child to freedom of expression and peaceful assembly.

As a youth development organisation, the ADF Cadets program brings together people who provide activities in which children and young adults can participate and develop a sense of and appreciation of their community. ADF Cadets payment is a partial payment made as an honorarium, to assist Officers and Instructors of cadets in those activities. It is not claimed for all activity and is not claimed regularly or at all by significant numbers of officers and instructors. This Instrument provides further information about the procedural incentive to ensure that claims are proximate to the activity they assist with, and makes clear that the payment is an honorarium for activities that are voluntarily performed by officers and instructors of ADF Cadets. Giving clear information about the nature of benefits provided for these offices and instructors is helpful to ensure transparency and manage expectations of individuals.

Conclusion

This Instrument is compatible with human rights because it advances the protection of human rights.