**Explanatory Statement**

**Defence (Payments to ADF Cadets) Determination 2022**

***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.

The *Defence (Payments to ADF Cadets) Determination 2022* repeals an earlier Determination. The new determination replicates the existing arrangements for payments in respect of ADF Cadets, and increases the flexibility around capacity to make payments to covers costs in exceptional circumstances. These payments may include, but are not restricted to, payment of medical, bereavement and other expenses arising from an incident or accident occurring at an approved ADF Cadet activity. It is not intended that this provision would apply to any expenses/payments already made through other means, such as Defence insurance arrangements or through Medicare or Private Health Insurance.

The intent is to remove the requirement to only allow payments in exceptional circumstances to be made as a reimbursement. Payments to meet unexpected expenses in exceptional circumstances may be provided to persons in relation to ADF cadets; officers and instructors of cadets, and also to other adult volunteers at an ADF Cadet activity such as Defence Approved Helpers. The decision makers for the payment of other expenses in exceptional circumstances are listed directly in this determination.

**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 the day after the Instrument is registered.

**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 2019*.

**Eligibility for payments**

Section 6(1) provides that an officer or instructor of ADF Cadets 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 officer or instructor of ADF Cadets is eligible for no more than 48 days of payment per financial year for ADF cadet activities. An officer or instructor of ADF Cadets 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 officer or instructor of ADF Cadets must apply for payment before the end of the following calendar month that the ADF cadet activity occurred. An officer or instructor of ADF Cadets 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 continue to 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](http://www.cadetnet.gov.au) on the day this instrument commences.

The wording of subsections 7(1) and 7(2) has been amended to remove repetition and provide a more consistent drafting approach across Defence.

**Recovery of amounts paid**

Section 8 provides for the recovery of an overpayment.

**Other benefits**

Subsection 9(1) provides for payment of other expenses in exceptional circumstances (e.g. a medical emergency, bereavement, or other expenses arising from an accident or incident occurring at an approved ADF Cadet activity). The subsection requires the decision maker to be satisfied that there are exceptional circumstances, and payments may be made in relation to cadets, officers and instructors of cadets and other adult volunteers. The requirement for this payment to only be made on a reimbursement basis has been removed.

Subsection 9(2) provides that the amount to be paid may be set by the decision maker.

Subsubsection 9(3) lists the decision makers who can determine if exceptional circumstances exist, and what amount may be paid.

It should be noted that the provision is not intended to apply to payment of other expenses that are already met by other means, including but not limited to Defence insurance arrangements or through Medicare or Private Health Insurance.

**Authorised persons**

Section 10 gives authority to certain persons as ‘authorised persons’ to make discretionary decisions in relation payments as prescribed in this instrument. Subsection 10(c) was no longer required, as the decision makers are now listed at subsection 9(3) of the instrument.

**Transitional Provisions**

This Determination does not remove any currently available benefits or payments, so transitional provisions are not required.

**Legislative Instrument**

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

**Commencement**

This instrument commences on the day after it is registered.

**Consultation**

Consultation with the Head Joint Support Services Division, the ADF Cadet organisations, Defence Family and Member Support Branch 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 2022*

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 activities 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 officers 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.