

# **EXPLANATORY STATEMENT**

## **Defence (Military Factor – Clearance diver transitional payment) Determination 2024 (No. 1)**

Determinations made under section 58B of the Defence Act are disallowable legislative instruments subject to the *Legislation Act 2003* (Legislation Act). These instruments are also subject to the interpretation principles in the Acts Interpretation Act 1901.

### **Purpose**

The purpose this Determination is to provide a payment to select clearance divers working on a Major Fleet Unit or a Minor War Vessel who were financially disadvantaged by the introduction of the Military Factor Framework, which comes into effect on 29 August 2024.

### **Operational details**

Details of the operation of the Determination are provided at annex A.

### **Incorporation of other instruments**

For the purpose of incorporating 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. Section 58B(1A) of the Defence Act permits DFRT determinations being adopted in this determination in accordance with section 14(1)(b) of the Legislation Act. For the purpose of this determination, the following apply:

- DFRT Determination 11 of 2013 is incorporated, as in force immediately before the commencement of DFRT Determination No 6 of 2024.
- DFRT Determination No. 6 of 2024 is incorporated, as in fore from time to time.

### **Human rights compatibility**

The statement of compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* for this Determination is at annex B.

### **Review options**

Decisions that are made under this Determination may be subject to inquiry under the ADF redress of grievance system provided under Part 7 of the *Defence Regulation 2016*. Also, a person may make a complaint to the Defence Force Ombudsman.

### **Consultation**

Before this Determination was made, the following consultation was undertaken with the Defence Force Remuneration Tribunal, Navy, Army and Air Force.

The rule maker was satisfied that further consultation was not required.

**Approved by:**

**BRIG Kirk Lloyd**

Director General

People Policy and Employment Conditions

**Authority:**

Section 58B of the  
*Defence Act 1903*

***Defence (Military Factor – Clearance diver transitional payment) Determination 2024 (No. 1)***

***Operational details***

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

Section 2 provides that this determination commences on commencement of DFRT Determination No. 6 of 2024.

Section 3 provides that this instrument has authority under section 58B of the Defence Act.

Section 4 provides the purpose of this Determination.

Section 5 provides the definition of:

- DFRT Determination No. 11 of 2013 which applies to this Determination and means DFRT Determination No. 11 of 2013, ADF Allowances, as in force immediately before the commencement of Defence Force Remuneration Tribunal Determination No. 6 of 2024.
- DFRT Determination No. 6 of 2024 means DFRT Determination No. 6 of 2024, as in force from time to time.

Section 6 provides that this Determination applies to a member who is a clearance diver posted to a Major Fleet Unit or a Minor War Vessel and the amount they would have been eligible to receive under DFRT Determination No. 11 of 2013 on a day is more than they are eligible for under DFRT Determination No. 6 of 2024 for the same day.

In addition, section 6 also provides that for the purpose of a member eligibility under this Determination the amount the member would be eligible to receive under DFRT Determination No. 11 of 2013 does not include separation allowance, a submarine capability assurance payment or a Navy retention incentive payment.

Section 7 provides the formula which is to be used to calculate the amount a member is to receive for each day they are eligible under this Determination.

Section 8 provides that this Determination is revoked on 25 May 2026.

***Defence (Military Factor – Clearance diver transitional payment) Determination 2024***

***Statement of Compatibility with Human Rights***

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

**Overview of the Determination**

The purpose this Determination is to provide a payment to select clearance divers working on a Major Fleet Unit or a Minor War Vessel who are financially disadvantaged by the introduction of the Military Factor framework.

**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.

***Assessment of compatibility***

This Determination is compatible with human rights as it provides select clearance divers working on a Major Fleet Unit or a Minor War Vessel an additional payment for each day the amount they would have been eligible to receive under DFRT Determination No. 11 of 2013 is more than they are eligible for under DFRT Determination No. 6 of 2024 for the same day. This ensures they are not financially disadvantaged by the introduction of the Military Factor framework.

**Conclusion**

This Determination is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.