

EXPLANATORY STATEMENT

Defence Force Remuneration Tribunal Determination No. 8 of 2017

This Determination amends Defence Force Remuneration Tribunal (DFRT) Determination No. 2 of 2017, *Salaries* (the Principal Determination), made under section 58H of the *Defence Act 1903* (the Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act). The Principal Determination sets out provisions dealing with salary for members of the Australian Defence Force (ADF).

The purpose of this Determination is to provide a consistent set of rules for the remuneration and treatment of senior officers of levels 9 and 10 ('O9' and 'O10' respectively) during their transition out of the Permanent after ceasing specific appointed positions.

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

Section 2 of this Determination provides that the Determination commences on 20 September 2017.

Section 3 provides that this instrument has authority under section 58H 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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Background

Prior to the repeal of *Defence (Personnel) Regulations 2002* on 1 October 2016, members appointed to Chief of Defence Force (CDF), Vice Chief of Defence Force (VCDF) or Service Chief were generally transferred to the Reserves at the end of their appointment. *Defence Regulation 2016* replaced the *Defence (Personnel) Regulations 2002* which does not require transfer to the Reserves.

On 13 July 2017, Defence made a submission to the DFRT seeking to establish a consistent set of rules for the remuneration and treatment of senior officers at the rank of Lieutenant General (equivalent) and above during their periods of transition out of the Permanent Forces on cessation of their appointments as Chief of the Defence Force (CDF), Vice Chief of the Defence Force (VCDF), a Service Chief or Chief of Joint Operations (CJOPS).

A paid transition period for these senior officers allows the senior officer time to complete tasks they were unable to undertake while serving in these highly demanding appointed positions.

All appointments (other than CJOPS) are remunerated under determinations made by the Remuneration Tribunal. CJOPS is not a statutory appointment and as such is remunerated under determinations made by the DFRT both during their appointment and also during the transition period.

Schedule 1 sets out amendments to DFRT Determination No. 2 of 2017, *Salaries*.

Sections 1 and 2 of Schedule 1 insert a note at the end of sections B.1.4 and B.1.5 respectively. The notes make express that base salary is salary for which superannuation contributions are payable. The notes were previously provided in the repealed DFRT No. 15 of 2008, *Salaries* and inadvertently omitted in the remake of the Principal Determination.

Section 3 of Schedule 1 omits and substitutes section B.1.6 which provides the remuneration for senior officers who enter a transition period to support their resignation, retirement or transfer to the Reserves after their appointment as CDF, VDCF, a Service Chief or CJOPS cease. These senior officers are to be paid the same annualised rate of salary for which superannuation contributions were payable as applied on their last day of appointment. The transition period is to allow the member to complete the career transition activities they were unable to undertake while in the demanding appointed position and perform or complete other operational tasks as required or directed. The period ends the day they cease service in the Permanent Forces or commence another appointment or position. The duration of the period is not specified so as to allow for unforeseen situations such as prolonged medical absence or organisation capability requirements for the member to complete specific tasks. However, the necessary transition activities are generally expected to take no more than eight weeks and senior officers are expected to complete their transition activities in a timely manner.

The Remuneration Tribunal and DFRT are independent of each other and therefore superannuable base salary rates for O9 and O10 differ according to rank. To avoid an unintended adverse effect on members' superannuable salary and to minimise administrative burden where possible, members are now remunerated during the transition period at the rate of superannuable salary they received on the final day of appointment. This is fair and reasonable given the member is no longer undertaking the role or responsibilities of the appointment. The changes make certain that the member's superannuable salary does not increase or decrease as a result of undertaking a period of transition.

Schedule 2 provides a transitional arrangement for the current CJOPS incumbent

Section 1 of Schedule 2 provides a transitional arrangement for the current senior officer in the CJOPS position, which maintains salary during the transition period equal to both the senior officer's superannuable salary and positional salary payable on the last day of their appointment. This arrangement was the policy in effect when this senior officer accepted the offer of appointment to CJOPS. Maintaining this arrangement ensures the member is not unfairly disadvantaged due to a change in provisions mid tenure. The transition period however, is limited to a maximum period of eight weeks.

When the current CDF, VCDF and the Service Chiefs incumbents accepted their appointment, there was no expectation of receiving the positional component of salary during the transition period hence a similar transitional arrangement is not required for them.

Authority: Section 58H of the
Defence Act 1903