EXPLANATORY STATEMENT

Defence Determination (Controlled relocation – HMAS Creswell) Determination 2019

This Determination is 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 (AI 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 AI Act.

The purpose of this Determination is to provide assistance to members of the Australian Defence Force (ADF) and their dependants in response to the controlled relocation from HMAS Creswell on 11 November 2019. The controlled relocation was to ensure the safety and welfare of members and dependants who live on HMAS Creswell due to the bushfire emergency.

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

Section 2 provides that this Determination commences on the day after registration.

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

Section 4 provides the purpose of this Determination.

Section 5 provides the definitions used in this Determination. The definitions include specifying who the decision maker is for the purpose of exercising the discretionary power under this Determination and the period of the controlled relocation. The Determination incorporates specified terms and phrases from Defence Determination 2016/19, Conditions of services, as in force from time to time, a legislative instrument made under section 58B of the Defence Act.

Section 6 specifies the class of member this Determination applies to. It is limited to members who were occupying a Service residence or living-in accommodation on HMAS Creswell on 11 November 2019.

Section 7 specifies the accommodation benefits a member is eligible for. A member who was occupying living-in accommodation on HMAS Creswell are eligible to occupy living-in accommodation on HMAS Albatross. Members who were occupying a Service residence on HMAS Creswell are eligible for the reasonable costs of alternative accommodation, such as a hotel, for them and their dependants to be covered for the duration of the relocation period.

Section 8 specifies that a member who was occupying a Service residence on HMAS Creswell is eligible for the costs of meals to be covered provided for each meal period is the cost of the meal up to the limit set in the table. The limit applies per person. A member who was occupying living-in accommodation is not eligible for their costs of meals to be covered, as they would be eligible for meals to be provided at no cost under Defence Determination 2016/19 as a consequence of being required to stay in living-in accommodation on HMAS Albatross.

Section 9 specifies that the member is eligible for a payment of up to $500.00 if the decision maker is satisfied that there are exceptional circumstances for the payment for costs that arose as a consequence of the controlled relocation.

This Determination provides benefits for a member in relation to an event occurring before the commencement of this Determination. The Determination is beneficial in nature and does not adversely affect the rights and obligations of a member.

Criteria are provided for the exercise of discretion under this Determination. Adverse decisions 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.

Authorised Version Explanatory Statement registered 29/11/2019 to F2019L01535
Consultation

Navy were consulted during the drafting of this instrument. The rule maker was satisfied that further external consultation was not required.

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 (Controlled relocation – HMAS Creswell) Determination 2019

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.

Overview of the Determination

The purpose of this Determination is to provide assistance to members of the Australian Defence Force (ADF) and their dependants in response to the controlled relocation from HMAS Creswell on 11 November 2019. The controlled relocation was to ensure the safety and welfare of members and dependants who live on HMAS Creswell due to the bushfire emergency.

Human rights implications

Right to an adequate standard of living

The protection of a person's right to an adequate standard of living engages Article 11 of the International Covenant on Economic, Social and Cultural Rights. Article 11 recognises the right of everyone to an adequate standard of living for them and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

This Determination recognises the right to an adequate standard of living by providing assistance with the cost of accommodation, meals and incidentals to members and their dependants in response to the controlled relocation from HMAS Creswell during the bushfire emergency. The controlled relocation was to ensure the safety and welfare of members and dependants who live on HMAS Creswell.

Conclusion

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

Fiona McSpeerin, Assistant Secretary People Policy and Employment Conditions