

# EXPLANATORY STATEMENT

## Defence Determination 2016/18

This Determination is made under section 58B of the *Defence Act 1903* (the Defence Act) by the Chief of the Defence Force, acting as delegate of the Minister for Defence, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act). Determinations made under section 58B of the Defence Act are disallowable legislative instruments and are subject to the interpretation principles in the Legislation Act 2003, as modified by section 58B of the Defence Act.

This Determination provides a payment to acknowledge the commitment the member's father has made in relation to the processes following the death of his son on 11 October 2012, following a vehicle accident at Holsworthy Range. Defence initially committed to an inquiry process following the member's death, however, the matter has been referred for a criminal process in New South Wales, which is ongoing. During the conduct of the criminal process, the inquiry has been suspended. Defence is not able to interfere in the conduct of the State's criminal process.

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

Clause 2 of this Determination provides that the Determination commences on the day it is registered.

Clause 3 specifies that the member's father is to be provided with a payment of \$50,000. The payment recognises the unique circumstances of the situation. It is not anticipated that these circumstances will occur again.

This Determination is not subject to inquiry under the ADF redress of grievance system however, a person may make a complaint about the Determination to the Defence Force Ombudsman.

**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 2016/18, Individual payment**

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**

This Determination is a single payment to an individual.

This Determination has the purpose of providing a payment to acknowledge the commitment that an ADF member's father has made in relation to the processes following the death of his son in a vehicle accident at Holsworthy Range in 2012. Defence initially committed to an inquiry process following the member's death, however, the matter has been referred for a criminal process in New South Wales, which is ongoing. During the conduct of the criminal process, the inquiry has been suspended.

### **Human rights implications**

#### *Minimum rights guarantee in relation to criminal prosecution*

Article 14 of the International Covenant on Civil and Political Rights provides certain rights for an individual who is the defendant in a criminal trial. In the current case, Defence cannot conclude its inquiry process and must suspend it while a criminal investigation and prosecution are occurring in the State where the incident took place, New South Wales. Defence is not able to interfere in the conduct of the State's criminal process. This is consistent with human rights standards, although it means that those interested in the outcome of the inquiry have had to wait longer than has been the case for other cases, for the inquiry cannot be concluded while the criminal process is ongoing.

#### *Just and favourable conditions of work*

The protection of a person's right to safety at work engages Article 7 of the International Covenant on Economic, Social and Cultural Rights. Article 7 guarantees just and favourable conditions of work, including safe and healthy conditions of work. The death of an ADF member demands prompt action to determine the cause of death or injury and the action, if any, that must be taken to prevent a recurrence. The Defence inquiry process relating to the death of the member was intended to do this, however, it was necessary to suspend the inquiry so that a criminal trial could take place in relation to the incident.

### **Conclusion**

This Determination is compatible with human rights because although the payment is prompted due to circumstances that may engage human rights, the payment to the member's father does not limit any human rights.

M D Binskin AC, Chief of the Defence Force