# EXPLANATORY STATEMENT

## Defence Determination 2017/32

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* (AIA 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 AIA Act, as modified by section 58B of the Defence Act.

The purpose of this Determination is to provide a payment to the mother and sister of a member of the Australian Defence Force (employee identification number 8497748) in recognition of certain expenses incurred and/or losses shouldered by them following the member’s return to Australia from deployment in January 2012 as the result of a medical condition through to, and as a result of, the member’s death in January 2014. Defence has generally well developed processes for supporting the families of members who are injured while serving, but in this case gaps in that support framework have been identified and losses were borne by the personal estate of the member in respect of which it was appropriate for Defence to provide financial assistance.

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

Section 2 is the commencement provision for the Determination and includes a table setting out the details of the commencement of sections of the Determination. Column 1 of the table sets out the provisions in numbered items, column 2 sets out the commencement and column 3 sets out date/details. Information in column 3 does not form part of the Act, so information can subsequently be inserted in the column (or edited) in a published version of the Determination. Item 1 in the table provides that the whole of this Determination commences on the day after registration.

Section 3 provides that this instrument has authority under section 58B of the *Defence Act 1903*.

Section 4 specifies that payments are to be made to certain members of the family of the former member of the Australian Defence Force with employee identification number 8497748. The payments recognise that elements of the support services generally provided to members were not fully mature and adapted to account for the circumstances of the situation. It is not anticipated that these shortfalls will occur again.

* Subsection 1 specifies that the member's sister is to be provided with a payment of $9,750.
* Subsection 2 specifies that the member's mother is to be provided with a payment of $25,000.

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

**Consultation**

Army and Defence Legal were consulted and agreed to the payment provided by this Determination. No external consultation was undertaken in accordance with section 17 of the *Legislation Act 2003* as the determination does not alter existing arrangements.

**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 2017/32, 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**

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**Human rights implications**

This Determination does not engage any applicable rights or freedoms.

**Conclusion**

This Determination is compatible with human rights it does not engage any applicable human rights or freedoms.

Mark Donald Binskin AC, Chief of the Defence Force