

# EXPLANATORY STATEMENT

## Defence (Domestic emergency operations) Determination 2020

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 Determination makes references to sections of Defence Determination 2016/19, *Conditions of service*, which are incorporated into this Determination as in force from time to time. Defence Determination 2016/19, *Conditions of service*, is a legislative instrument made under section 58B of the Defence Act.

The purpose of this Determination is to provide a reimbursement to members for the costs associated with their early return from a holiday location and unrecoverable costs associated with the cancellation of, or the change to, a holiday if they are required to provide service as a part of an operation established in response to a domestic emergency, which may include a natural disaster or the outbreak of an infectious disease such as COVID-19 during a pandemic.

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

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

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

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 provides the purpose of the Determination.

Section 6 provides the definitions used in this Determination. The definitions provide terms necessary for the operation of this Determination, including identifying decision-makers for the purpose of exercising the discretionary power under this Determination and incorporating specified terms and phrases from Defence Determination 2016/19, *Conditions of service*, as in force from time to time.

Section 7 specifies the classes of members this Determination applies to. It applies to the following:

- Members of the Reserves who provide service on an operation established in response to a domestic emergency who have to cancel or amend holiday arrangements in order to provide the Reserve service. The member may provide service on an operation voluntarily or in response to a call out order.
- Members on continuous full-time service who have a period of approved leave or short absence which is cancelled as a consequence of being assigned on an operation established in response to a domestic emergency and had to cancel or amend holiday arrangements as a consequence of being required to provide service on the operation. The member may be on continuous full-time service as a member of the Permanent Forces or as a member of the Reserves.

Section 8 provides that a member is eligible for the reimbursement of reasonable costs of transport, accommodation and meals associated with the return of the member and dependants from the holiday location, and reimbursements for unused parts of the holiday. Section 8 applies to the member's dependants if they travelled, or were to travel, with the member. In particular, section 8 provides:

- If the member has left the posting location and they are able to modify their transport booking, for example: if the booking was for a flexible ticket, the member is eligible for any additional expenses.
- If the member has left the posting location and they are unable to modify their transport booking, for example: if the booking was for a ticket that does not permit changes, the member is eligible for the cost of a new booking.

- The member may be reimbursed reasonable costs in association with the cancellation of unused portions of any holiday arrangements. This may include, but is not limited to, the cost of cancelled accommodation or transport. The amount that may be reimbursed is limited to what is unrecoverable from service providers or through travel insurance.

Section 9 prevents a member eligible for a reimbursement of costs under Chapter 5 Part 13 of Defence Determination 2016/19, *Conditions of service*, from being eligible to receive benefits reimbursement under this Determination for the same period of service.

#### Schedule 1—Repeals

Section 1 repeals Defence Determination (Operation BUSHFIRE ASSIST) Determination 2020 in full.

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*. A person may also make a complaint to the Defence Force Ombudsman.

#### **Consultation**

Navy, Army and Air Force were consulted before this Determination was made. 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 (Domestic emergency operations) Determination 2020***

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 a reimbursement to members for the costs associated with their early return from a holiday location and unrecoverable costs associated with the cancellation of, or the change to, a holiday if they are required to provide service as a part of an operation established in response to a domestic emergency, which may include a natural disaster or the outbreak of an infectious disease such as COVID-19 during a pandemic.

### **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.

This Determination advances just and favourable conditions of work by providing a reimbursement of costs that a member incurred if they are required to provide service as a part of an operation established in response to a domestic emergency. Members are eligible for the reimbursement of costs associated with transport, accommodation and meals to return them and their dependants from a holiday location. The Determination also provides a reimbursement of reasonable costs associated with the cancellation of, or amendment to, holiday arrangements that they and their dependants were not able to benefit from as a consequence of being required to provide service.

### **Conclusion**

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

Fiona Louise McSpeerin, Assistant Secretary People Policy and Employment Conditions