

# EXPLANATORY STATEMENT

## Defence Determination (Funeral costs – amendment) 2018 (No. 4)

This Determination amends Defence Determination 2016/19, Conditions of service (the Principal Determination), 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.

This Determination amends the following Chapters of the Principal Determination which sets out provisions for members of the Australian Defence Force (ADF).

- Chapter 11 sets out provisions dealing with compensation and benefits on death.
- Chapter 15 sets out provisions dealing with living and working on long-term posting overseas.

This Determination has four purposes.

- It revises the funeral benefits for deceased members or former members in Australia.
- It gives more flexibility for funerals for members from a variety of religions, faiths and cultural traditions.
- It provides for funeral and travel benefits on the death of a member's dependant.
- It revises the funeral benefits paid when a member dies when on a long-term overseas posting.

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

Section 2 provides that this instrument commences on 8 February 2018.

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Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 sets out amendments to the Principal Determination.

Section 1 substitutes Chapter 11 Part 4 of the Principal Determination, which provided a deceased member's family financial assistance for funeral costs, floral and non-floral tributes. The new Part has the following features.

The Part overview has the following four sections.

- Section 11.4.1 sets out the purpose of the Part.
- Section 11.4.2 sets out the contents of the Part.
- Section 11.4.3 sets out which benefits apply when a deceased member is both a member and a dependant.
- Section 11.4.4 sets out an administrative process for the payment of benefits under the Part.

Division 1 provides the funeral costs, floral and non-floral tributes on the death of a member or former member. The Division is broadly similar to the former Chapter 11 Part 4 of the Principal Determination and has the following sections.

- Section 11.4.5 sets out the purpose of the Division.
- Section 11.4.6 describes the members and former members the Division applies to. This includes members of the Permanent Forces, members of the Reserves when they meet any of the specified circumstances, specified retired members and members who were awarded the Victoria Cross or the Victoria Cross for Australia.
- Section 11.4.7 sets out that this Division does not apply to members who are absent without leave at the time of their death. The Division does not apply to members who die on duty overseas, alternative arrangements are made for them in section 15.9.3 of the Principal Determination, substituted by Schedule 2 section 2 of this Determination.
- Section 11.4.8 defines a term used in this Division.
- Section 11.4.9 sets out that the Director General Defence Community Organisation (DGDCO) may approve the payment of funeral costs on a member's or former member's death, up to \$14,000. DGDCO has been given more flexibility in deciding what costs will be paid by the Commonwealth for the funerals of members or former members from a variety of religions, faiths and cultural traditions. There is also a provision to allow DGDCO to approve additional costs above \$14,000 when there are exceptional circumstances.
- Section 11.4.10 provides for a funeral benefit when a member or former member dies in Australia but the funeral is to be held overseas. The benefit is capped at the cost of an Australian funeral.
- Section 11.4.11 provides travel and accommodation costs for dependants and other approved people to attend a deceased member's or former member's funeral within Australia.
- Section 11.4.12 provides for the floral and non-floral tributes for specified memorial and commemoration events.

Division 2 provides arrangements on the death of a dependant in Australia. The Division has the following three sections.

- Section 11.4.13 sets out the purpose of the Division.
- Section 11.4.14 describes the members the Division applies to.
- Section 11.4.15 sets out the benefits that may be paid on the death of a dependant. The benefits are preparation and transportation costs to the location of the funeral. For a funeral to be held overseas, the benefit is preparation and transportation to the Australian departure point.

Schedule 2 sets out amendments to the Principal Determination.

Section 1 amends section 11.0.2 of the Principal Determination, which sets out the contents of Chapter 11. The title of Part 4 is being amended to reflect the change to the title of the Part made by Schedule 1 of this Determination.

Section 2 substitutes section 15.9.3 of the Principal Determination, which provided the funeral costs payable when a member or dependant dies overseas. The section has been split into two new sections to provide clarity on the costs that are payable when the member dies or a dependant dies.

- Section 15.9.3 provides the assistance that will be provided if a member dies while on a long-term overseas posting. If the member's remains are returned to Australia, the benefit provides assistance with the cost of the preparation and returning the member's remains, also the funeral benefits under Chapter 11 Part 4 Division 1 may also be approved. If the funeral is in the overseas location, the benefit provides assistance with the costs of the funeral up to a \$14,000 which is equal to the rate payable for an Australian funeral.
- Section 15.9.3A provides the assistance that will be provided if a dependant dies while accompanying a member on a long-term overseas posting. The benefit provides assistance with the cost of returning the dependant to Australia or the cost of a funeral overseas, up to \$14,000.

### **Consultation**

The Defence Community Organisation was consulted in the preparation of this Determination. The rule maker was satisfied that external consultation was not required. The instrument increases the level of assistance provided to members of the Australian Defence Force and their dependants.

**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 (Funeral costs – amendment) 2018 (No. 4)**

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 amends Defence Determination 2016/19, Conditions of service. It has four purposes.

- It revises the funeral benefits for deceased members or former members in Australia.
- It gives more flexibility for funerals for members from a variety of religions, faiths and cultural traditions.
- It provides for funeral and travel benefits on the death of a member's dependant.
- It revises the funeral benefits paid when a member dies when on a long-term overseas posting.

### **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.

#### *The protection of a person's right to care for dependants*

The protection and assistance accorded to the family engages Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 10 guarantees the widest possible protection and assistance to families, including their responsibility for the education and care of dependent children.

Funeral benefits are not a routine condition of service in Australian society. Benefits already exist for funeral costs to be paid for an Australian Defence Force (ADF) member or former member. This Determination gives more flexibility for funerals for members or former members from a variety of religions, faiths and cultural traditions by providing the decision maker more flexibility in deciding what funeral costs will be paid by the Commonwealth.

This Determination also extends some benefits to member's dependants. These benefits provide for the payment of the costs of preparation of the dependant's remains and the transportation of those remains to the location of the funeral. Because of the ADF's policy of regularly posting members to locations around Australia and overseas, it is very possible that when a death occurs, the family is living in a location that is not the one where their extended family lives. The family could choose to have the funeral in the location they regard as their "home town". This need for travel imposes additional costs at a very stressful time.

### **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