

## **EXPLANATORY STATEMENT**

### **Military Rehabilitation and Compensation (Non-warlike Service) Determination 2016 (No. 1)**

This Instrument repeals and replaces a previous determination made under paragraph 6(1) (b) of the *Military Rehabilitation and Compensation Act 2004* (the Act). Paragraph 6(1) (b) of the Act defines non-warlike service as meaning service with the Australian Defence Force (the ADF) that is of a kind determined in writing by the Defence Minister to be non-warlike service for the purposes of the Act.

The purpose of this Instrument is to replace the existing list of 25 operations, referred to in Military Rehabilitation and Compensation (Non-warlike Service) Determination 2015 (No. 2) and add one new operation, Operation Okra in an amended area which is considered to be non-warlike under the auspices of the Act. This has been added as item 24 in Schedule 1. All other details remain unchanged.

Clause 1 sets out the name and manner in which this Instrument may be cited.

Clause 2 provides that the Instrument commences in accordance with column 2 of the table, which is the day after this Instrument is registered.

Clause 3 provides the authority under which this Instrument is made.

Clause 4 specifies that each instrument in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.

Clause 5 makes clear the definition of certain abbreviations and acronyms used throughout this Instrument.

Clause 6 specifies that service in an operation described in Schedule 1 is non-warlike service for the purposes of paragraph 6(1) (b) of the Act.

Any retrospective operation of this Instrument is required to ensure that no ADF member (or his or her legal personal representative as the case may be) is disadvantaged if claiming for death, injury or disease that may have occurred between the period when they commenced service on the operation and the date that this Instrument is registered on the Federal Register of Legislative Instruments.

Schedule 1 includes a new item, Operation Okra, in an amended area with a commencement date of 9 September 2015 and adds an end date to service in the previous area of 08 September 2015. This amendment recognises the ADF contribution to the Iraq and Syria crisis.

Schedule 2 repeals the Military Rehabilitation and Compensation (Non-warlike Service) Determination 2015 (No. 2).

This Instrument does not affect the rights of any persons (other than the Commonwealth) so as to disadvantage those persons nor does it impose liabilities

(other than on the Commonwealth) in respect of anything done before the date this Instrument commences.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is exempt from disallowance pursuant to item 21 in Section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Regulations) and is also exempt from sunseting pursuant to item 39 in Section 12 of the Regulations.

**Consultation**

The Department of the Prime Minister and Cabinet and the Department of Veterans' Affairs were consulted during the classification process. It is noted that decisions about the nature of service are subject to bipartisan consultation through Government and do not impact business or competition.

Authority: Paragraph 6(1) (b) of the  
*Military Rehabilitation and Compensation Act*  
2004

## Statement of Compatibility with Human Rights

The *Human Rights (Parliamentary Scrutiny) Act 2011* section 9(1) states that a legislative instrument subject to disallowance requires a Statement of Compatibility to be prepared. Though this Determination is not subject to disallowance it 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*.

This Instrument has the following two purposes:

- replace the existing list of 25 operations, referred to in Military Rehabilitation and Compensation (Non-warlike Service) Determination 2015 (No. 2)
- add one new operation, Operation Okra in an amended area which is considered to be non-warlike under the auspices of the Act.

This Instrument engages the following human rights:

- *The right to health is the right to the enjoyment of the highest attainable standard of physical and mental health* (article 12(1) International Covenant on Economic, Social and Cultural Rights),
- *The right to social security requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme* (article 9 International Covenant on Economic, Social and Cultural Rights),
- *The prohibition on interference with privacy and attacks on reputation* (article 17 of the International Covenant on Civil and Political Rights),
- *Live, take part and be included in the community* (article 19 Convention on the Rights of Persons with Disabilities).

This Military Rehabilitation and Compensation (Non-warlike Service) Determination 2016 (No. 1) establishes that service provided by ADF members on Operation Okra in an amended area, is non-warlike service for the purposes of paragraph 6(1)(b) of the Act. Operation Okra, an operation described in Schedule 1, is the ADF's contribution to the Iraq and Syria crisis.

*Legitimate objective:* Defence members who become ill or injured in the course of duty may require special assistance and support on return from that duty. Whether an injury or illness is seen as arising out of duty may depend on the nature of the service that the member has been required to perform. The actual decision about whether the nature of service will be warlike or non-warlike is made by the Executive, this Instrument simply ensures that the nature of service that a member provides is reflected in the level and type of benefits that they may be eligible for if they are ill or injured due to their Service.

The retrospective application of this Instrument does not affect the rights of any persons (other than the Commonwealth) so as to disadvantage those persons nor does it impose liabilities (other than on the Commonwealth) in respect of anything done before the date the Instrument is registered. It is a beneficial legislative instrument.

*Reasonable, necessary and proportionate:* Determining the nature of service that a member has provided allows the relevant level of additional support to be provided to assist the member with the health care and other needs that they may have as a member. Benefits may also be provided to a member's dependants, who are directly affected by the additional needs that a member may have as a result of their illness or injury.

Although the application for benefits may require some provision of personal information and some limitation on the suppliers of health treatment and benefits that are provided, these restrictions are considered proportional:

- the personal information is treated in accordance with legislated privacy protections, and
- the benefits are additional to those provided to the general public and address a special need arising out of a member's injury or illness.

This Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.