

## **EXPLANATORY STATEMENT**

### **Defence Force (Home Loans Assistance) (Warlike Service – Operation Okra) Determination 2016**

The *Defence Force (Home Loans Assistance) Act 1990* (the Act), together with the Agreement incorporated in the Act, provides for the payment of housing loan subsidies for certain members of the Australian Defence Force (ADF). Section 3C (1) of the Act enables the Minister to declare duty to be warlike service for the purposes of the Act.

The purpose of this Instrument is to declare service provided by ADF personnel within the amended area of Operation Okra, the ADF contribution to the Iraq and Syria crisis, as warlike service for the purpose of the Act.

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

Clause 2 provides that the Instrument commences on the day after it 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Clause 4 specifies that each instrument in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.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 as described in the item is warlike service for the purposes of subsection 3C (1) of the Act. This 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 8 September 2015. Any retrospective operation of this Instrument is required to ensure that no ADF member is disadvantaged by the provision of entitlements that may have occurred between the period when they commenced service on the operation and the date that this Instrument is registered.

The affect of this Instrument is that it will enable members of the ADF who are rendering or have rendered warlike service on Operation Okra, within the amended area, and are entitled to assistance under the Defence HomeOwner Scheme established under the Act and the Agreement, to certain additional benefits under the Act. These benefits entitle a person who is rendering or has rendered warlike service to additional periods of housing subsidy as well as a waiver of the five year qualifying period of service. The entitlement to additional years of subsidy range from two additional years, for warlike service of less than three months, to five additional years for warlike service of more than nine months.

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 1903*.

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: Subsection 3C (1) of the  
*Defence Force (Home  
Loans Assistance) Act  
1990*

## Statement of Compatibility with Human Rights

This Instrument 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 purpose:

- to declare service provided by Australian Defence Force (ADF) personnel within the amended area of Operation Okra, the ADF contribution to the Iraq and Syria crisis, as warlike service for the purpose of the Act
- *Right to an adequate standard of living* (article 11(1) International Covenant on Economic, Social and Cultural Rights).

The *Defence Force (Home Loans Assistance) (Warlike Service – Operation Okra) Determination 2016* establishes that service provided by ADF personnel on the operation contributing to the Iraq and Syria crisis, is within the definition of “warlike service” in section 3C (1) of the *Defence Force (Home Loans Assistance) Act 1990*.

*Legitimate objective:* Defence members who perform duty on warlike operations qualify for a housing subsidy, the period of which depends on the length of duty in the warlike specified area. The actual decision about whether the nature of service will be warlike or non-warlike is made by the Executive. This declaration 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 as a veteran.

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 purchase of their own home.

Although the application for benefits may require some provision of personal information, 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 to address veterans’ needs.

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