

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Warlike Service) Amendment Determination 2020 (No. 1)

This Determination amends the *Military Rehabilitation and Compensation (Warlike Service) Determination 2019* (the Principal Determination) made under paragraph 6(1)(a) of the *Military Rehabilitation and Compensation Act 2004* (the Act). Paragraph 6(1)(a) of the Act defines 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 warlike service.

A determination of warlike service requires the Military Rehabilitation and Compensation Commission to apply a more beneficial standard of proof when assessing a claim for liability of a veteran's injury, disease or death in relation to a period of warlike service. This beneficial standard of proof reflects an understanding of the unique nature of military service and the risks associated with service on warlike and non-warlike operations. Similarly, an assessment of permanent impairment and the calculation of compensation payable to a member involves determining a compensation factor for an impairment and lifestyle rating whereby a service differential applies. The outcomes in terms of compensation will be more beneficial for ADF members who are injured or contract a disease that relates to warlike service and will mean greater compensation amounts will be payable compared to those members who were injured on peacetime service. A veteran with warlike service will, subject to income and assets tests, be eligible for the Service Pension at age 60, which is earlier than Age pension age. A veteran with warlike service will be eligible for the Service Pension at any age if permanently incapacitated for work. The warlike service classification also renders a veteran automatically eligible for receipt of the Department of Veterans' Affairs (DVA) Veteran Gold Card at age 70. In recognition of the unquantifiable effects of combat, the Veteran Gold Card provides treatment for any medical condition on the Medicare Benefits Schedule, irrespective of the link to military service. A veteran in receipt of the Service Pension, and with a permanent impairment from accepted conditions assessed at 30 points or above, is also eligible for the Veteran Gold Card regardless of age.

This Determination 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.

The purpose of this Determination is to add Operation Orenda as a warlike operation to the Principal Determination.

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

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

Section 3 identifies that this Determination has authority under paragraph 6(1)(a) of the *Military Rehabilitation and Compensation Act 2004*.

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 – Warlike Service

Section 1 of this Determination inserts a new operation into the Principal Determination. Operation Orenda has been inserted into the table at Schedule 1 at item 18 and specifies the nature of operation, the area of operation and the period from which Service in that area is Warlike Service for the purposes of the definition in paragraph 6(1)(a) of the Act.

Consultation

The Department of Veterans' Affairs was 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.

The rulemaker was satisfied that further external consultation was not required.

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