

EXPLANATORY STATEMENT

Veterans' Entitlements (Non-warlike Service) Amendment Determination 2022 (No. 1)

This Determination amends the *Veterans' Entitlements (Non-warlike Service) Determination 2019* (the Principal Determination) made under subsection 5C(1) of the *Veterans' Entitlements Act 1986* (the Act), which provides for the payment of pensions and other benefits to, and medical treatment for, veterans and certain other persons, and for other purposes.

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is exempt from disallowance pursuant to item 33 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Regulations) and is also exempt from sunseting pursuant to item 65 in section 12 of the Regulations.

Subsection 5C(1) of the Act defines non-warlike service as meaning service in the Defence Force of a kind determined in writing by the Defence Minister to be non-warlike service.

A determination of non-warlike service under the Act allows the Repatriation 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 non-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 or non-warlike operations.

The purpose of this Determination is to add a new non-warlike operation, Operation Lilia, into the table which states the nature, area and period of operation.

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 is made under the definition of non-warlike service in subsection 5C(1) of the *Veterans' Entitlements Act 1986*.

Section 4 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

The historical dates in this Determination do not affect the rights of a person (other than the Commonwealth) in a manner prejudicial to that person, nor does it impose any liability on such a person (other than the Commonwealth). The retrospective application of this Determination is required to ensure that no ADF member (or their legal personal representative) 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 commencement of this Determination.

Schedule 1 – Non-warlike Service amendment

Section 1 inserts item 40 into Schedule 1 of the Principal Determination provides that on and after 25 November 2021 service on Operation Lilia in the Solomon Islands is non-warlike service for the purposes of the definition of non-warlike service in subsection 5C(1) of the Act.

Consultation

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 5C(1) of the
Veterans' Entitlements Act 1986