

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Non-warlike Service) Amendment Determination 2024 (No. 1)

This Determination amends *Military Rehabilitation and Compensation (Non-warlike Service) Determination 2019* (the Principal Determination) made under paragraph 6(1)(b) of the *Military Rehabilitation and Compensation Act 2004* (the Act) and in accordance with subsection 33(3) of the *Acts Interpretation Act 1901* (AIA Act). This instrument is also subject to the interpretation principles in the AIA Act.

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.

Paragraph 6(1)(b) of the Act defines non-warlike service as meaning service with the Defence Force that is of a kind determined in writing by the Defence Minister to be non-warlike service for the purposes of this Act.

A determination of non-warlike service allows 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 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 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 non-warlike or warlike service and will mean greater compensation amounts will be payable compared to those members who were injured on peacetime service.

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

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.

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

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

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

Section 4 provides that each Determination 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.

Schedule 1—Non-warlike service amendment

Section 1 inserts item 26A into Schedule 1 of the Principal Determination which provides that from 21 December 2020 to 11 February 2021 service on support operations in Somalia is non-warlike service for the purposes of the definition of non-warlike service in paragraph 6(1)(b) of the Act.

Section 2 inserts item 28 into Schedule 1 of the Principal Determination which provides that from 18 June 2022 to 3 July 2022 service on ADF reconnaissance tasks and support to the Prime Minister's visit in Ukraine is non-warlike service for the purposes of the definition of non-warlike service in paragraph 6(1)(b) 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: Paragraph 6(1)(b) of the
*Military Rehabilitation and
Compensation Act 2004*