EXPLANATORY STATEMENT
Military Rehabilitation and Compensation (Warlike Service) Determination 2012 (No. 1)

This Determination revokes and replaces all previous 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 for the purposes of the Act.

The purpose of this Determination is to amend the existing list of eight operations referred to in Determination 2011/1, by adding a new operation, the ADF contribution to the North Atlantic Treaty Organization (NATO) no-fly-zone and maritime enforcement operation against Libya. This operation has not been allocated an operational name but is referenced by its task descriptor. The references to the other operations in this Determination are identical to those set out previously in Determination 2011/1.

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

Clause 2 provides that the Determination commences on the day after it is registered.

Clause 3 revokes all previous determinations made under paragraph 6(1)(a) of the Act.

Clause 4 makes clear the definition of certain words and acronyms used throughout the Determination.

Clause 5 specifies that service in an operation described in Schedule 1 is warlike service for the purposes of paragraph 6(1)(a) of the Act.

Schedule 1 includes a new Item 9, the ADF contribution to the NATO no-fly-zone and maritime enforcement operation against Libya. This amendment recognises the ADF contribution to the NATO no-fly-zone and maritime enforcement operation against Libya, in the described area of operation for the specified period, as warlike for the purposes of paragraph 6(1)(a) of the Act.

This Determination 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 Determination commences.

This Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003 and is exempt from disallowance pursuant to item 6A of Schedule 2 of the Legislative Instruments Regulations 2004 and is also exempt from sunsetting pursuant to item 3A of Schedule 3 of the Regulations.
Statement of Compatibility with Human Rights

This Determination 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 Determination 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).

The Military Rehabilitation and Compensation Act 2004, (Warlike Service) Determination 2012 (No.1) establishes that service provided by ADF members on operations contributing to the NATO no-fly-zone and maritime enforcement operation against Libya, in the described area of operation for the specified period, is warlike service for the purposes of paragraph 6(1)(a) of the Act. Operations referred to in Schedule 1, Item 9 are operations that provide support to the United Nations Security Councils Resolutions 1970 and 1973 inside the described Area of Operation.

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 determination simply ensures than 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 the Service.

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

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)(a) of the
Military Rehabilitation and Compensation Act 2004