EXPLANATORY STATEMENT
Military Rehabilitation and Compensation (Non-warlike Service) Determination 2012 (No. 3)

This Determination revokes and replaces a previous determination made under paragraph 6(1)(b) of the Military Rehabilitation and Compensation Act 2004 (the Act). Paragraph 6(1)(b) of the Act defines non-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 non-warlike service for the purposes of the Act.

The purpose of this Determination is to detail the eighteenth operations which are considered to be non-warlike under the auspices of the Act.

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 the Military Rehabilitation and Compensation Determination (Non-warlike Service) 2012 (No. 2).

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

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

Schedule 1 includes a new Item 18, Operation Quickstep Tonga. This amendment recognises the ADF operation to assist the Government of Tonga with the restoration of law and order, in the described area of operation, as non-warlike for the purposes of paragraph 6(1)(b) of the Act.

The references to the other operations in this Determination are identical to those set out previously in Determination 2012 (No. 2) except for item 16 where a minor editorial change has been made to reinstate the previously recorded end date which was inadvertently omitted in Military Rehabilitation and Compensation Determination (Non-warlike Service) 2012 (No. 2). A further editorial change is the start date and end date columns have been combined into one column titled ‘Period’. Where a start date only is listed, the dash indicates the period is ongoing. These changes have no effect on the members assigned to this operation.

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, (Non-warlike Service) Determination 2012 (No.3) establishes that service provided by ADF members on Operation Quickstep Tonga, is non warlike service for the purposes of paragraph 6(1)(b) of the Act. Operation Quickstep Tonga, an operation described in Schedule 1, was an operation to assist in the restoration the law and order in the Kingdom of Tonga,

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 their 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 member. 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 (by telephone and e-mail) 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*