EXPLANATORY STATEMENT
Military Rehabilitation and Compensation (Warlike Service)
Determination 2012 (No. 2)

Paragraph 6(1)(a) of the Military Rehabilitation and Compensation Act 2004 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 replace the existing list of nine operations referred to in the 2012/1 Determination, by adding an end date to Operation Slipper with its current area of operations (item 7) and adding a new Operation Slipper with an amended area of operations (item 10). The reference to the other operations in the 2012/1 Determination remains unchanged.

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

Clause 2 provides that the Determination commences on 20 February 2012.

Clause 3 revokes the Military Rehabilitation and Compensation (Warlike Service) Determination 2012 No. 1.

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 an end date for Operation Slipper at Item 7 and includes a new Item 10, the ADF contribution to the International Coalition against Terrorism in an expanded area of operations for Operation Slipper. This amendment recognises the changed operational area for Operation Slipper where the warlike determination for the purposes of paragraph 6(1)(a) the Act applies.

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 (Warlike Service) Determination 2012 (No.2)* establishes that service provided by ADF members on Operation Slipper in the described area of operation for the specified period, is warlike service for the purposes of paragraph 6(1)(a) of the Act. The operations referred to in Schedule 1, Item 10 is an operation that contributes to the International Coalition against Terrorism.

**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 that 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 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_