EXPLANATORY STATEMENT
Military Rehabilitation and Compensation (Non-warlike Service) Determination 2014 (No.1)

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 replace the existing list of 18 operations, referred to in Military Rehabilitation and Compensation Determination (Non-warlike Service) 2012 (No.3) and add two new operations; Operation Accordion (Item 19) and Operation Manitou (Item 20) 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 1 July 2014.

Clause 3 provides the authority under which this determination is made.

Clause 4 specifies that each instrument in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.

Clause 5 makes clear the definition of certain acronyms used throughout the Determination.

Clause 6 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.

Any retrospective operation of this Determination is required to ensure that no ADF member (or his or her legal personal representative as the case may be) 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 date that this Determination is registered on the Federal Register of Legislative Instruments. The retrospective application of 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 the Determination is registered.

Schedule 1 includes two new Items, 19 and 20, Operation Accordion and Manitou, respectively. This amendment recognises the ADF operation to support operations in Bahrain, Qatar and the United Arab Emirates in relation to the ADF contribution to the International Coalition against Terrorism (Operation Accordion) and maritime operations including counter-piracy operations (operation Manitou), in the described area of operations, 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.3) apart from minor editorial changes to the format expressing the date of open operations to include the words 'on and from'.

Schedule 2 repeals the Military Rehabilitation and Compensation (Non-warlike Service Determination 2012 (No.3).

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 23 of Schedule 3 of the Regulations.

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
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 has the following two purposes:

- to replace the existing list of 18 operations, referred to in Military Rehabilitation and Compensation Determination (Non-warlike Service) 2012 (No.3)

- to add two new operations; Operation Accordion (Item 19) and Operation Manitou (Item 20) which are considered to be non-warlike under the auspices of the Act.

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 2014 establishes that service provided by ADF members on Operation Accordion and Operation Manitou, is non warlike service for the purposes of paragraph 6(1)(b) of the Act. Operation Accordion, an operation described in Schedule 1, as an operation that supports operations in Bahrain, Qatar and the United Arab Emirates in relation to the ADF contribution to the International Coalition against Terrorism and Operation Manitou as the maritime operation, including counter-piracy 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 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.