

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Minister for Housing and Assistant Treasurer**

*Income Tax Assessment Act 1936*

*Income Tax Assessment (1936 Act) Amendment (Operation Orenda Eligible Duty)  
Regulations 2020*

Section 266 of the *Income Tax Assessment Act 1936* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Income Tax Assessment (1936 Act) Amendment (Operation Orenda Eligible Duty) Regulations 2020* (the Amending Regulations) is to amend the *Income Tax (1936 Act) Regulation 2015* (the Regulation) to provide that duty performed by Australian Defence Force (ADF) personnel serving on Operation Orenda is ‘eligible duty’ for the purpose of section 23AD of the Act.

Section 23AD of the Act provides that the remuneration of ADF members is exempt from tax if:

- the individual is on ‘eligible duty’ with a specified organisation in a specified area outside Australia and the Chief of the ADF has issued a certificate to that effect; and
- the eligible duty is not as, or under, an attaché at an Australian embassy or legation.

Subsection 23AD(2) of the Act provides that regulations may declare that duty with a specified organisation in a specified area outside Australia and after a specified day is ‘eligible duty’.

Where the Chief of the ADF issues a certificate for the purposes of paragraph 23AD(1)(a) of the Act, paragraph 23AD(3)(b) states that the certificate continues in force until the individual’s departure from the specified area, revocation of the certificate by the Chief of the ADF, or any such time prescribed by the regulations (whichever is earliest).

Section 6 of the Regulation lists defence operations declared ‘eligible duty’ with reference to a specific geographical area and period in which the duty is an ‘eligible duty’. The Amending Regulations amend section 6 to include Operation Orenda which is carried out in the land area and superjacent airspace of Mali. This allows the salary and allowances of ADF personnel serving on this operation to be exempt from income tax on an ongoing basis.

The Amending Regulations apply from 1 April 2020 which is the first day when ADF personnel could have been deployed on Operation Orenda. The amendments are beneficial to members of the ADF on duty for Operation Orenda and no person is disadvantaged by the retrospective application of the amendments.

Public consultation was not undertaken as the Amending Regulations relates to Defence Force operations and do not impact directly on the public. The Department of Defence has been consulted in the development of this measure.

The Act specifies no conditions that need to be met before the power to make the Amending Regulations may be exercised.

The Amending Regulations has a negligible compliance cost impact.

The Amending Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulations commenced on the day after it was registered.

A statement of Compatibility with Human Rights is in the [Attachment](#).

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Income Tax Assessment (1936 Act) Amendment (Operation Orenda Eligible Duty) Regulations 2020***

This Legislative Instrument 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*.

**Overview of the Legislative Instrument**

The purpose of the *Income Tax Assessment (1936 Act) Amendment (Operation Orenda Eligible Duty) Regulations 2020* is to amend the *Income Tax (1936 Act) Regulation 2015* to provide that duty performed by ADF personnel serving on Operations Orenda is ‘eligible duty’ for the purpose of section 23AD of the *Income Tax Assessment Act 1936*. This allows the salary and allowances of ADF personnel serving on this operation to be exempt from income tax on an ongoing basis.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.