

EXPLANATORY STATEMENT

Veterans' Entitlements (Warlike Service – Operation HERRICK)

Determination 2014

The *Veterans' Entitlements Act 1986* (the Act) provides for the payment of pensions and other benefits to, and medical treatment for, veterans and certain other persons, and for other purposes. In particular, it provides for automatic treatment for certain cancers, post traumatic stress disorder and some other prescribed conditions, access to the Veterans and Veterans Families Counselling Service, funeral benefits, Service pension, access to gold card and the Victoria Cross Allowance.

The purpose of this Determination is to declare service by Australian Defence Force (ADF) personnel on a Third Country Deployment to Operation HERRICK, the United Kingdom contribution to the International Security Assistance Force mission in Afghanistan, as warlike service for the purpose 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 September 2004.

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

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

Clause 5 specifies that service in an operation as described in table 1 is warlike service for the purposes of subsection 5C (1) of the Act.

The 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.

This Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and is exempt from disallowance pursuant to item 10 of Schedule 2 of the *Legislative Instruments Regulations 2004* (the Regulations) and is also exempt from sunseting pursuant to item 47 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).

The *Veterans' Entitlements (Warlike Service – operation HERRICK) Determination 2014* establishes that service by ADF personnel on a Third Country Deployment to Operation HERRICK, the United Kingdom contribution to the International Security Assistance Force mission in Afghanistan, is within the definition of “warlike service” in section 5C(1) of the *Veterans' Entitlements Act 1986*.

Legitimate objective: Defence members who perform duty on operations may require special assistance and support on return from that duty. The requirement for support may increase as members age. Different levels of support are available depending 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 declaration 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 as a veteran.

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 dependant partner, who is directly affected by the additional needs that a member may have as a result of their status as a veteran.

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 to address veterans' special needs.

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: Subsection 5C (1) of the
Veterans' Entitlements Act
1986