EXPLANATORY STATEMENT

<u>Issued by authority of the Minister for Revenue and Financial Services</u>

Income Tax Assessment Act 1936

Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017

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 giving effect to the Act.

The purpose of Schedule 1 to the Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017 (the Amending Regulations) is to amend the Income Tax (1936 Act) Regulation 2015 (the Regulation) to ensure that duty performed by Australian Defence Force personnel serving on Operations Okra, Accordion, Manitou and Highroad continues to be 'eligible duty' for the purpose of Section 23AD of the *Income Tax Assessment Act 1936* (the Act). This will allow the remuneration of Australian Defence Force personnel serving on these operations to be exempted from income tax on an ongoing basis. The Amending Regulations also update the geographic coordinates for Operations Manitou and Augury.

Section 23AD of the Act provides that the remuneration of Defence Force 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 Defence Force 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 the 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 Defence Force issues a certificate for the purposes of paragraph 23AD(1)(a) of the Act, paragraph 23AD(3)(b) of the Act 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 Defence Force, or any such time prescribed by the regulations (whichever is earliest).

Defence operations declared to be 'eligible duty' are listed in regulation 6 of the Regulation with reference to a specific geographical area and period in which the duty is 'eligible duty'. The Amending Regulations update regulation 6 to remove the end date for Operations Okra, Accordion, Manitou and Highroad on an ongoing basis and update the geographic coordinates for Operations Manitou and Augury.

The Amending Regulations will apply from the day after they are registered for the removal of the end dates for Operations Okra, Accordion, Manitou and Highroad.

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They will apply from 28 April 2016 for the changes to the geographic coordinates for Operation Augury and from 14 November 2016 for the changes to the geographic coordinates for Operation Manitou. The amendments will be beneficial to members of the Australian Defence Force on duty in the geographic areas that are being added to the table in subsection 6(3) of the Regulation, and no person is disadvantaged by the retrospective application of the amendments.

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

Public consultation was not undertaken as the amendments relate to Defence Force operations and do not impact directly on the public.

These amendments have a negligible compliance cost impact.

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 (Defence Force Eligible Duty) Regulations 2017

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

Schedule 1 to the Income Tax Assessment (1936 Act) Amendment (Defence Force Eligible Duty) Regulations 2017 amends the Income Tax (1936 Act) Regulation 2015 (the Regulation) to exempt from income tax the remuneration of Australian Defence Force personnel serving on Operations Okra, Accordion, Manitou and Highroad on an ongoing basis. The Amending Regulation also updates the geographic coordinates for Operations Manitou and Augury.

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.

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