

EXPLANATORY STATEMENT

Veterans' Entitlements (Non-warlike Service - Operation Manitou) Determination 2017

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 Instrument is to declare service provided by Australian Defence Force (ADF) personnel on Operation Manitou, the maritime operation, including counter-piracy operations, as non-warlike service for the purpose of the Act.

Clause 1 sets out the name and manner in which this Instrument may be cited.

Clause 2 provides that the Instrument commences in accordance with column 2 of the table, which is the day after this instrument is registered.

Clause 3 provides the authority under which this Instrument 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Clause 4 specifies that each instrument in the Schedule is amended or repealed as set out in the applicable items in the Schedule concerned.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 specifies that service in an operation as described in the table is non-warlike service for the purposes of subsection 5C(1) of the Act. This inserts an item, Operation Manitou in varying areas of operations for three periods: 1 July 2014-13 May 2015; 14 May 2015 to 13 November 2016 (this Instrument closes this area of operation for 13 November 2016); and a third period on and after 14 November 2016 (This Instrument establishes the third period from 14 November 2016). Any retrospective operation of this Instrument 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 Instrument is registered.

Schedule 1 repeals the Veterans' Entitlements (Non-warlike Service-Operation Manitou) Determination 2015.

This Instrument 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 instrument commences and is not affected by section 12(2) of the *Legislation Act 2003*.

This Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is exempt from disallowance pursuant to item 33 in Section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Regulations) and is also exempt from sunseting pursuant to item 65 in Section 12 of the Regulations.

Consultation

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

Statement of Compatibility with Human Rights

The *Human Rights (Parliamentary Scrutiny) Act 2011* section 9(1) states that a legislative instrument subject to disallowance requires a Statement of Compatibility to be prepared. Though this Instrument is not subject to disallowance it 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 Instrument has the following purpose:

- to declare service provided by Australian Defence Force (ADF) personnel on Operation Manitou, the maritime operation, including counter-piracy operations, as non-warlike service for the purpose of the Act.

This Instrument 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).

This Veterans' Entitlements (Non-warlike Service-Operation Manitou) Determination 2017 establishes that service provided by ADF personnel on maritime operations, including counter-piracy operations, is within the definition of "non-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 Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.