

EXPLANATORY STATEMENT

Veterans' Entitlements (Non-warlike Service) Determination 2019

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. A determination of non-warlike service under the Act allows the Repatriation Commission to apply a more beneficial standard of proof when assessing a claim for liability of a veteran's injury, disease or death in relation to a period of non-warlike service. This beneficial standard of proof reflects an understanding of the unique nature of military service and the risks associated with service on warlike or non-warlike operations. A veteran with non-warlike service will also be eligible for treatment of malignant neoplasia and pulmonary tuberculosis on a non-liability basis.

This Determination 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.

The purpose of this Determination is to:

- Repeal and consolidate 35 determinations made under the Act into one principal determination;
- Amend an area of operation for Operation Okra;
- Add cessation dates for nine operations; and
- Add a new non-warlike operation.

Section 1 of this Determination sets out the manner in which this Determination may be cited.

Section 2 provides that this Determination commences the day after registration on the Federal Register of Legislation.

Section 3 identifies that this Determination is made under the definition of non-warlike service in subsection 5C(1) of the *Veterans' Entitlements Act 1986*.

Section 4 provides that each instrument that is specified in a Schedule to this Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Determination has effect according to its terms.

Section 5 provides definitions of terms used throughout this Determination.

Section 6 specifies that service in an operation described in Schedule 1 is non-warlike service for the purposes of subsection 5C(1) of the Act. Any historical dates in this Determination are required to ensure that no ADF member (or their 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.

Schedule 1 – Non-warlike service

Section 1 specifies the areas of operation and the period in which Service in that area is non-warlike Service for the purposes of the definition of non-warlike service in subsection 5C(1) of the Act. The difference between the table provided in this Determination and the determinations that are repealed by Schedule 2 to this Determination, is as follows:

- Operation Faber – the two previous determinations made in respect to Operation Faber, which recognised the ADF contribution to the United Nations Advance Mission in East Timor within the period of 19 June – 15 September 1999, are combined into one.
- Operation Okra – in addition to including the previous areas of Operation Okra, this Determination includes an additional area of Operation Okra covering the period 1 July 2014 – 8 August 2014.

- This Determination specifies cessation dates for the following operations:
 - Operation Joint Guardian.
 - Operation Pomelo.
 - Operation Anode.
 - Operation Citadel.
 - Operation Spire.
 - Operation Azure.
 - Operation Astute.
 - Operation Ramp.
 - Operation Hedgerow.
 - Operation Hawick.
- A new operation recognising the ADF contribution to efforts against global terrorism within the period 16 May 2016 to 2 August 2016 has been added at item 35.

Schedule 2 – Repeals

Section 1 repeals 35 instruments in their entirety as they have been consolidated into this Determination.

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' Entitlement Act 1986

Statement of Compatibility with Human Rights

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

Veterans' Entitlements (Non-warlike Service) Determination 2019

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*.

Overview of the Determination

The purpose of this Determination is to:

- Repeal and consolidate 35 determinations made under the Act into one principal determination;
- Amend an area of operation for Operation Okra;
- Add cessation dates for nine operations; and
- Add one new non-warlike operation which is considered to be non-warlike under the auspices of the Act.

Human rights implications

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),
- *Live, take part and be included in the community* (article 19 Convention on the Rights of Persons with Disabilities).

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 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 if they are ill or injured due to their Service.

The historical dates in this Determination do 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 is registered. It is a beneficial legislative instrument.

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.

Conclusion

This Determination is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Darren Chester, Minister for Defence Personnel