

# EXPLANATORY STATEMENT

## Veterans' Entitlements (Warlike Service) Amendment Determination 2021 (No. 1)

This Determination amends the *Veterans' Entitlements (Warlike Service) Determination 2019* (the Principal Determination) made under subsection 5C(1) of the *Veterans' Entitlements Act 1986* (the Act). Subsection 5C(1) of the Act defines warlike service as meaning service in the Defence Force of a kind determined in writing by the Minister for Defence to be warlike service.

A determination of warlike service under the Act requires 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 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 operations. A veteran with warlike service will, subject to income and assets tests, be eligible for the Service Pension at age 60, which is earlier than Age Pension age. A veteran with warlike service will be eligible for the Service Pension at any age if permanently incapacitated for work. The warlike service classification also renders a veteran automatically eligible for receipt of the Department of Veterans' Affairs (DVA) Veteran Gold Card at age 70. In recognition of the unquantifiable effects of combat, the Veteran Gold Card provides treatment for any medical condition on the Medicare Benefits Schedule, irrespective of the link to military service. A veteran in receipt of the Service Pension, and with a level of service-related disability assessed at 50% or greater of the General Rate of Disability Pension, is also eligible for the Veteran Gold Card regardless of age.

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 extend the area of operation for Operation Augury to include Iraq and Syria.

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

Section 2 provides that this instrument commences on the day after registration.

Section 3 identifies that this Determination is made under the definition of 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 instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### Schedule 1 – Warlike Service amendment

Section 1 of this Schedule inserts a row expanding the area recognised as warlike for Operation Augury to include Iraq and Syria in the table at Schedule 1 of the Principal Determination after item 30. Warlike Service for the purposes of the definition in subsection 5C(1) of the Act commences on 1 December 2020 in Iraq and Syria for Operation Augury.

### Consultation

The Department of Veterans' Affairs was 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.

The rule maker was satisfied that further external consultation was not required.

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