EXPLANATORY STATEMENT

Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013

EMPOWERING PROVISION

Section 37AA(1) of the Veterans' Entitlements Act 1986 (the Act).

PURPOSE

The attached instrument (2013 No.R31) specifies the circumstances in which a person is permanently incapacitated for work for eligibility for an invalidity service pension under the Act.

The instrument replaces the Veterans’ Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 1999 and is essentially the same as that former instrument except for the addition of paragraph 7(1)(c):

“(1) A person is permanently incapacitated for work for paragraph 37(1)(c) of the Act if the person:

... (c) is a veteran who:

(i) is receiving a Special Rate Disability Pension; or
(ii) would be receiving a Special Rate Disability Pension but for the application of section 204 or 415 of the MRCA; or
(iii) the Military Rehabilitation and Compensation Commission is satisfied meets the eligibility criteria in subsection 199(1) of the MRCA; or ”

Under subsections 26(1B) and 26(1C) of the Legislative Instruments Act 2003 (as paraphrased), subordinate legislation that merely replaces previous subordinate legislation does not need explaining in an Explanatory Statement.

Paragraph 7(1)(c) implements a recommendation of the Review of Military Compensation Arrangements (2009).

The Review was a Government commitment to examine the current military rehabilitation and compensation system.

The report of the Review’s Steering Committee was released by the Minister for Veterans' Affairs on 18 March 2011.

The Government responded to the report of the Review on 8 May 2012 and one of the recommendations it accepted was that:

“11.3 SRDP [Special Rate Disability Pension] recipients and SRDP-eligible former members should have automatic eligibility for invalidity service pension in the same manner as recipients of the Special Rate of pension under the VEA [Veterans’ Entitlements Act 1986]”
CONSULTATION

Yes. The Steering Committee for the Review of Military Compensation Arrangements consulted the Veteran & Defence Community. Consultation was via ADF base public meetings, a dedicated WebPage, Ex Service Organisation (ESO) working party meetings with ESOs and correspondence.

RETROSPECTIVITY

If the attached instrument commenced before registration, subsection 12(2) of the Legislative Instruments Act 2003 (legislative instrument of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person) would not be contravened because the instrument does not disadvantage any person or impose a liability on any person (except the Commonwealth).

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

HUMAN RIGHTS STATEMENT


The instrument does engage an applicable right or freedom. It relates to the right to social security in article 9 of the International Covenant on Economic, Social and Cultural Rights. The right to social security requires, among other things, the right to a minimum essential level of benefits for all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

The instrument makes it easier for certain members of the community (veterans) to obtain a pension for an injury or disease (Invalidity Service Pension).

A veteran is eligible for an Invalidity Service Pension if he or she is permanently incapacitated for work.

The Repatriation Commission may determine the circumstances in which a veteran is permanently incapacitated for work and the Repatriation Commission has made such a determination (attached). The determination sets out criteria a veteran may satisfy in order to be permanently incapacitated for work.

The attached instrument introduces a new and alternative criterion for a veteran to be classified as being permanently incapacitated for work. The additional criterion is for a veteran, who as a member of the Defence Force for the purposes of the MRCA, may, generally speaking, be eligible for a Special Rate Disability Pension, depending on the degree of permanent impairment and ability for rehabilitation to improve their chances to return to work. If a person is eligible for a Special Rate Disability Pension then that is recognition of the person being permanently incapacitated for work.

The availability of this extra ground for establishing permanent incapacity for work means a veteran may not need to re-establish permanent incapacity for work in
accordance with the other criteria in the relevant determination which could mean less inconvenience for the veteran and that the veteran is determined as eligible for an Invalidity Service Pension more quickly.

The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

The attached instrument does affect the qualifying conditions for the Invalidity Service Pension but in a positive way. It expands those conditions but not so as to limit the availability of the pension but to make it easier to obtain. Accordingly it complies with the UN Committee’s requirements.

Conclusion

The instrument is compatible with human rights because it complements the right to social security.

Repatriation Commission
Rule-Maker

**FURTHER EXPLANATION**

Attachment A.
Attachment A

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<thead>
<tr>
<th>Items</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>1.</td>
<td>sets out the name of the instrument.</td>
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<td>2.</td>
<td>provides that the instrument commences on 1 July 2013.</td>
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<td>3.</td>
<td>revokes the former instrument that set out the circumstances in which a veteran could be permanently incapacitated for work in order to be eligible for an Invalidity Service Pension.</td>
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<td>4.</td>
<td>ensures that the revocation of the former instrument does not affect the right of any veteran that accrued under that instrument.</td>
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<td>5.</td>
<td>is a definition section.</td>
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<td>6.</td>
<td>states the purpose of the instrument, namely to specify the circumstances in which a person is permanently incapacitated for work for eligibility for an Invalidity Service Pension.</td>
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<tr>
<td>7.</td>
<td>sets out the circumstances in which a person is permanently incapacitated for work for eligibility for an Invalidity Service Pension.</td>
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The new circumstance is that in 7(1)(c) i.e. the person is a veteran who

- is receiving a Special Rate Disability Pension; or
- would be receiving a Special Rate Disability Pension (SRDP) but for the application of section 204 [offsetting other compensation against SRDP] or 415 [recovery of overpayment from SRDP] of the MRCA; or
- the Military Rehabilitation and Compensation Commission is satisfied meets the eligibility criteria in subsection 199(1) of the MRCA.

Note (1) informs the reader about the purpose of section 204 of the MRCA, namely to offset certain payments against SRDP, and how the application of that section could result in a person not receiving any SRDP.

As the person would not be receiving SRDP he or she might not satisfy the “incapacity for work criterion” for the Invalidity Service Pension. However as the person would be actually incapacitated for work for the purposes of receiving the Invalidity Service Pension, despite not receiving SRDP, it was necessary to neutralise the application of section 204, which is the purpose of section 7(1)(c)(ii).

Note (2) informs the reader that the application of section 415(4) of the MRCA could result in a person not receiving any SRDP. Section 415(4) would enable an overpayment under MRCA to be deducted from, among any other payments under MRCA, the SRDP.

As with the application of section 204 resulting in a person not receiving SRDP and the attached instrument needing to neutralise the application of that section, so too with the application of section 415 and the need to neutralise its...
application for the same reason – namely to ensure that a person who is actually incapacitated for work may still satisfy the “incapacity for work test” for Invalidity Service Pension even though the person does not actually receive SRDP but would receive it but for the application of provisions that may reduce it to a nil amount.

An example of an overpayment that could be deducted from the SRDP thereby reducing it to a nil rate is the overpayment worked out under section 204A of the MRCA where a person converts weekly compensation for an incapacity to a lump sum payment.