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

made under the

Veterans' Entitlements Act 1986

Instrument 2013 No. R31

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

The REPATRIATION COMMISSION makes this Determination under subsection 37AA(1) of the Veterans’ Entitlements Act 1986.

Dated this 8th day of May 2013

IAN CAMPBELL PSM PRESIDENT

SHANE CARMODY DEPUTY PRESIDENT

MAJOR GENERAL MARK KELLY AO DSC COMMISSIONER
1. Name of Determination

This Determination is the Veterans’ Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013.

2. Commencement

This Determination commences on 1 July 2013.

3. Revocation

The Veterans’ Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 1999 is revoked.

4. Savings

A veteran who immediately before the commencement of this Determination was permanently incapacitated for work in accordance with a provision (former provision) in the Veterans’ Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 1999 is, on the commencement of this Determination, permanently incapacitated for work in accordance with the provision in this Determination that is a restatement of the former provision.

5. Definitions

*Act* means the Veterans’ Entitlements Act 1986.
*invalidity service pension* means the service pension of that name payable under Part III of the *Act.*
*service pension* means a pension payable under Part III of the *Act.*
*Special Rate Disability Pension* has the meaning given by section 198 of the MRCA.

Note: the following terms are defined in the *Act:*

“approved Guide to the Assessment of Rates of Veterans’ Pensions” (s.5Q(1))
“Commission” (s.5A)
“Military Rehabilitation and Compensation Commission” (s.5Q(1))
“MRCA” (s.5Q(1))
“veteran” s.5C(1))

6. Purpose of Determination

This Determination specifies the circumstances in which a person is permanently incapacitated for work for eligibility for an invalidity service pension.
7. **Circumstances of permanent incapacity**

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

(a) is permanently blind in both eyes; or
(b) is a veteran to whom section 24 of the Act applies; or
(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

(d) satisfies subsection (2).

Note (1): s.204 is about “offsetting” and may result in a Special Rate Disability Pension (SRDP) being reduced, including to a nil rate, on account of e.g. the reduction of SRDP for permanent impairment payments or Commonwealth superannuation received, in which case the person would not be receiving SRDP. Hence the need for 7(1)(c)(ii).

Note (2): Under s.415(4) of the MRCA, an overpayment to a person may be deducted from an amount payable to the person under MRCA e.g. Special Rate Disability Pension (SRDP). An example of an overpayment is the amount worked out under s.204A of the MRCA where a person converts weekly compensation for an incapacity to a lump sum payment. The deduction of an overpayment from the SRDP could reduce the SRDP to a nil rate in which case the person would not be receiving SRDP. Hence the need for 7(1)(c)(ii).

(2) A person satisfies this subsection if:

(a) the person has an impairment that, if it were an injury or disease for the approved Guide to the Assessment of Rates of Veterans’ Pensions, would result in a combined impairment rating of 40 or more under Table 18.1 in that Guide; and

(b) solely because of the impairment, the person is permanently unable to do work for periods adding up to more than 8 hours per week; and

(c) the Commission is satisfied that the impairment is permanent.