

Military Rehabilitation and Compensation Amendment Regulations 2004 (No. 1) 2004 No. 350

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 350

Issued by the Authority of the Minister for Veterans' Affairs

Military Rehabilitation and Compensation Act 2004

Military Rehabilitation and Compensation Amendment Regulations 2004 (No. 1)

The *Military Rehabilitation and Compensation Act 2004* (the Act) provides for compensation and other benefits to be provided for current and former members of the Australian Defence Force (ADF) who suffer a service injury or disease. The Act also provides for compensation and other benefits to be provided for the dependants of some deceased members.

Section 440 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Military Rehabilitation and Compensation Regulations 2004* (the Principal Regulations) provide for the calculation of compensation in relation to cadets and persons who have been declared by the Minister for Defence to be members for the purposes of the Act.

The purpose of the Regulations is to insert a new Part into the Principal Regulations to provide for the indexation of certain amounts on which compensation that is paid under the Act to members and former members of the ADF, including cadets and declared members, is based.

Indexation of pre-CFTS pay and civilian daily earnings

The Act introduces the concepts of 'pre-CFTS (continuous full-time service) pay' and 'civilian daily earnings' to assist in the calculation of compensation for the loss of 'normal earnings' by members and former members of the Defence Reserves. In the case of Reservists incapacitated as a result of CFTS, the pre-CFTS pay may be greater than their ADP earnings, while for part-time Reservists, civilian earnings will usually provide the bulk of their income.

Section 182 of the Act provides for the indexation of these amounts. This section provides that regulations may specify an index and a manner of working out an index to ensure that any calculations of normal earnings will be indexed on a regular basis. The indexation ensures that normal earnings calculations follow average annual wage cost increases and that the person's income does not fall behind that of the community as a whole.

The Regulations will provide that the amount of indexation will be calculated using wage movements over the year ending 31 December. The increase from the indexed amount would be reflected in normal earnings on 1 July each year. As the first determinations of pre-CFTS pay and civilian daily earnings would be made in 2004-05, the initial indexation would occur on 1 July 2005.

The Regulations will use the *Total hourly rates of pay excluding bonuses index*, contained in the Australian Bureau of Statistics 6345.0 Wage Cost Index, Australia. This is the same index as that used to index weekly earnings under the *Safety, Rehabilitation and Compensation Act 1988*.

Indexation of \$100 in ADF pay

The Act provides that when calculating compensation based on normal earnings for certain members and former members of the ADF, an amount of \$100 per week is added to ADF pay and allowances. This compensates for the loss of non-pay related allowances.

All dollar amounts in the Act are in 2002-03 dollars, as the exposure draft of the legislation was released for public comment in that financial year. Under section 404 of the Act, certain specified dollar amounts are indexed by the CPI with the first indexation occurring on 1 July 2003, which is when the first indexation year commences for the purposes of the Act. However, the \$100 in ADF pay amounts is not indexed in this way.

Section 183 of the Act provides that regulations may specify the formula to be used to index the \$100 remuneration loading that is included in normal earnings calculations for ADF members.

Subsection 183(1) of the Act provides that the regulations may specify the index to be used, and that amount of indexation is to be calculated using movements in that index over the year ending 31 December for the purposes of indexing the \$100 per week in ADF pay. The Regulations will specify that the percentage increases applying to salaries under the ADF Workplace Remuneration Arrangement be used. The Regulations will show how the amount will vary for wage movements since the exposure draft of the legislation was released and will ensure that the \$100 per week appropriately reflects future movements in ADF pay rates.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations would be taken to have commenced on 1 July 2004, being the date on which the Principal Regulations commenced. This will enable the \$100 amount in ADF pay to be indexed on the same date as other amounts specified in the Act.

The fact that the Regulations would take effect before gazettal would not cause the Regulations to be ineffective by virtue of subsection 48(2) of the *Acts Interpretation Act 1901* because the rights of a person at gazettal would not be affected so as to disadvantage the person nor will a liability be imposed on any person in respect of anything done or omitted to be done before gazettal. The Regulations are beneficial legislation.

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ATTACHMENT

Details of the *Military Rehabilitation and Compensation Amendment Regulations 2004 (No. 1)*

Regulation 1 provides that the name of the Regulations is the *Military Rehabilitation and Compensation Amendment Regulations 2004 (No. 1)*.

Regulation 2 provides for the Regulations to be taken to have commenced on 1 July 2004.

Regulation 3 provides that Schedule 1 amends the *Military Rehabilitation and Compensation Regulations 2004*.

Schedule 1 - Amendment

Item [1] inserts a new Part 5 after Part 4 of the Principal Regulations.

New Part 5 provides for the indexation of certain pay and earnings.

Regulation 19 inserts the indexation provisions relating to pre-CFTS (continuous full-time service) pay and civilian daily earnings.

Subregulation 19(1) states the index for section 182 of the Act is based on the Australian Bureau of Statistics 6345.0 Wage Cost Index, Australia. The index used, Total hourly rates of pay excluding bonuses, is also used to index weekly earnings under the *Safety, Rehabilitation and Compensation Act 1988*.

Subregulation 19(2) sets out the manner of working out an increase in the amount of a person's pre-CFTS pay or civilian daily earnings. The method is based on that used in the Act to index amounts by the CPI, but replacing the CPI in the formula by the Wages index.

Regulation 20 inserts the indexation provisions relating to the \$100 which is included in the normal earnings calculation for certain members and former members of the ADF. The \$100 amount reflects the non-financial components that make up the entire remuneration for ADF members.

Subregulation 20(1) specifies the index to be used for the purposes of section 183 of the Act.

Paragraph 183(1)(b) of the Act provides that the regulations may specify the manner of working out an increase in the amount of \$100 mentioned in specified provisions of the Act.

The current ADF Workplace Remuneration Arrangement apply across the board percentage increases in ADF salary.

For the purposes of indexing the \$100 per week in ADF pay, the percentage increases applied in the ADF Workplace Remuneration Arrangement would be used.

Subregulation 20(2) sets out the manner of working out the increase in the amount of \$100.

Paragraphs 20(2)(a) and (b) prescribes pre-calculated indexation formulas for the years ending 31 December 2002 and 2003, using the index set out in subregulation 20(1).

Paragraph 20(2)(c) prescribes, for each subsequent calendar year, a method of calculating the indexation formula using the index set out in sub regulation 20(1).