

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Veterans' Affairs

Military Rehabilitation and Compensation Act 2004

Section 67

(MRCA Instrument No. 1 of 2004)

GUIDE TO DETERMINING IMPAIRMENT AND COMPENSATION

The purpose and operation of GARP V (M)

The *Military Rehabilitation and Compensation Act 2004* (the Act) provides for compensation and rehabilitation for members and former members of the Australian Defence Force who sustain injury or disease as a result of their service.

Where the Military Rehabilitation and Compensation Commission (the Commission) has accepted liability for an injury or disease which results in permanent impairment, compensation is payable if the degree of that impairment is above a certain level. Section 67 of the Act provides that the Commission may determine in writing a guide to determining the level of impairment and compensation.

The purpose of the instrument to which this Explanatory Statement relates is to adopt and modify a similar guide prepared by the Repatriation Commission under the *Veterans' Entitlements Act 1986* (VEA) known as the Guide to the Assessment of Rates of Veterans' Pensions Fifth Edition (GARP V). This guide sets out the criteria to assess the degree of impairment from a service injury or disease and to provide criteria for assessing the effect of impairment on a person's lifestyle when determining the compensation payable to a person under the VEA.

The guide, determined under the Act, is to be known as GARP V (M).

This guide will be used in the same way as the GARP V under the VEA. Paragraph 67(1)(b) of the Act states that impairment will be assessed on a point scale from 0 to 100, as impairment points are used elsewhere as thresholds for the provision of certain benefits. Impairment points and lifestyle rating will be combined to determine the amount of compensation payable. This will be expressed as a compensation factor on a scale from 0 to 1. The compensation factor will be applied to the maximum amount payable under section 74 of the Act.

Subsection 67(2) of the Act requires the Commission to specify two methods that are not used in GARP V. These are tables used to determine compensation payable for warlike and non-warlike service as distinct from peacetime service, because different compensation factors will apply for the same impairment and lifestyle rating.

In addition the Commission must specify a method for calculating compensation payable when a mixture of warlike or non-warlike service and peacetime service applies, as the compensation payable for impairment will be a weighted average.

Under subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* the Commission may include in the guide under section 67 of the Act one or more methods of working out the amount of compensation a person is entitled to under Part 2 of Chapter 4 of the Act (permanent impairment) for the service injury or disease. A method may (but does not have to) include a method of offsetting payments made to the person under the VEA or the *Safety, Rehabilitation and Compensation Act 1988* in respect of the old injury or disease.

Under subsection 67(4) of the Act, the guide, and any repeal or amendment of the guide, is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

This determination comes into effect on 1 July 2004.

Documents Incorporated by Reference

Certain chapters of the Guide to the Assessment of Rates of Veterans' Pensions (GARP V)

GARP V is available on the Web page of the Department of Veterans' Affairs <http://www.dva.gov.au/pensions/> [search for "CLIK"]

Consultation

A Working Group of Ex-Service Organisations, that comprised 11 organisations that represent veterans, members and former members, and their families, was consulted. The Department of Defence was part of the joint project team developing the new Act.

Retrospective Operation

None. The Instrument was made on 21 June 2004 and commenced on 1 July 2004. The instrument was notified in Commonwealth of Australia Gazette No. GN 27, 7 July 2004.