



## Military Rehabilitation and Compensation Act Education and Training Scheme (Clean Energy Payments) Determination 2012

*Military Rehabilitation and Compensation Act 2004*

Instrument 2012 No. M6

I, Warren Snowdon, Minister for Veterans' Affairs, pursuant to subsection 258(5) of the *Military Rehabilitation and Compensation Act 2004*, approve this instrument made by the delegates of the Military Rehabilitation and Compensation Commission.

Dated this 16th day of April 2012

Warren Snowdon.....

**WARREN SNOWDON**

The delegates of the Military Rehabilitation and Compensation Commission, pursuant to subsection 258(4) of the *Military Rehabilitation and Compensation Act 2004*, vary the *Military Rehabilitation and Compensation Act Education and Training Scheme* (Instrument 2004 No. M4 as amended) in accordance with the Schedule.

Dated this 4th day of April 2012

The Seal of the  
Military Rehabilitation  
and Compensation Commission )SEAL  
was affixed hereto in the  
presence of: )

Ian Campbell                      Shane Carmody                      Major General Mark Kelly

**IAN CAMPBELL**

PSM

CHAIR and DELEGATE

**SHANE CARMODY**

MEMBER and DELEGATE

**MAJOR GENERAL MARK KELLY**

AO DSC

MEMBER and DELEGATE

**1. Name of determination**

This Determination is the *Military Rehabilitation and Compensation Act Education and Training Scheme (Clean Energy Payments) Determination 2012*.

**2. Commencement**

This Instrument commences on 14 May 2012.

# Schedule

## 3. Paragraph 1.2.1

*after the paragraph, insert:*

### 1.2.2 Clean Energy Definitions

In this determination:

**ABSTUDY** has the same meaning it has in the *Social Security Act 1991*.

**Act** means the *Military Rehabilitation and Compensation Act 2004*.

**change day** means the day on which a person has a change in circumstances that results in a change to the type or rate of *clean energy base payment* that the person receives.

**clean energy advance**, unless a contrary intention appears, means the payment of that name under PART 3A.

**clean energy advance daily rate** means the rate worked out under paragraph 3A.3.1.

**clean energy advance eligibility day** means:

- (a) for a person eligible for a *clean energy advance* because of a determination made under paragraph 3A.1.1 — the day that determination is made; or
- (b) for a person eligible for a *clean energy advance* because of a determination made under paragraph 3A.1.2 or 3A.1.3—the day specified in that determination because of subsection paragraph 3A.1.4.

Note: The day specified in the determination because of paragraph 3A.1.4 is the first day during the *clean energy advance period* for which the person satisfies the eligibility requirements, disregarding any short temporary absence from Australia.

**clean energy advance period** means:

- (a) for a person eligible under paragraph 3A.1.1 or 3A.1.2 for a *clean energy advance*—the period starting on 1 July 2012 and ending on 30 June 2013; or
- (b) for a person eligible under paragraph 3A.1.3 for a *clean energy advance*—the period starting on 1 July 2013 and ending on 31 December 2013.

**clean energy base payment** means:

- an *ABSTUDY Living Allowance*; or

- a *clean energy qualifying payment*; or
- a *clean energy underlying payment*; or
- a clean energy underlying payment under the *MRCA*; or
- a clean energy underlying payment under the *VCES*; or
- a clean energy underlying payment under the *VEA*.

Note: the *MRCA*, the *VCES* and the *VEA* contain their own definitions of “clean energy underlying payment”.

***clean energy bonus*** has the same meaning it has in the *Act*.

***clean energy payment*** means a payment under PART 3A.

***clean energy qualifying payment*** has the same meaning it has in the *Social Security Act 1991*.

***clean energy supplement*** means clean energy supplement payable under paragraph 3A.12.1 for a *clean energy underlying payment* at a rate determined under or by reference to the *clean energy underlying payment*.

***clean energy underlying payment* or *education allowance*** means an education allowance under one of the following paragraphs in PART 3:

- paragraph 3.3 (allowance for secondary or tertiary student living at home)
- paragraph 3.4 (allowance for secondary student living away from home)
- paragraph 3.5 (allowance for tertiary student living away from home)
- paragraph 3.6 (allowance for homeless student)

***Commission*** means the Military Rehabilitation and Compensation Commission established by section 361 of the *Act*.

***Commonwealth scheme*** means a set of regulatory provisions contained in an instrument made under an Act of the Commonwealth.

***disability pension*** means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to Division 4 of Part II of the *VEA*.

***most recent change day*** means the *change day* that is closest in time to the day the person’s *top-up payment* is being calculated.

***most recent clean energy advance daily rate*** means the *clean energy advance daily rate* that would have been used to calculate a person’s *clean energy advance* if the person’s *clean energy advance eligibility day* was the *most recent change day*.

***MRCA*** means the *Military Rehabilitation and Compensation Act 2004*.

**MRCA wholly dependent partner payment** means the compensation payable under Division 2 of Part 2 of Chapter 5 of the *MRCA*.

**MRCAETS** means the *Military Rehabilitation and Compensation Act Education and Training Scheme* made under subsection 258(1) of the *Act*.

**multiple entitlement exclusion** has the same meaning as in subsection 424H(4) of the *Act*.

**new change day**, in relation to a person, means a *change day* that occurs after the person has previously been eligible for a *top-up payment* under PART 3A.

**new clean energy advance daily rate** means the *clean energy advance daily rate* that would have been used to calculate a person's *clean energy advance* if the person was first eligible for a *clean energy advance* on the *change day*.

**new clean energy advance period**, in relation to a person, means the *clean energy advance period* that applies to the person from the *change day*.

**original change day**, in relation to a person, means the first *change day* for the person.

**original clean energy advance daily rate**, in relation to a person, means the *clean energy advance daily rate* that was used to calculate the person's *original payment*.

**original payment**, in relation to a person, means the *clean energy advance* (advance) originally paid to the person in respect of a *clean energy underlying payment*, for the *clean energy advance period* in respect of that advance.

**original payment start day**, in relation to a person's *original payment*, means the later of the start of the *clean energy advance period* for the original payment or the person's *clean energy advance eligibility day*.

**quarterly clean energy supplement** means the payment described in paragraph 3A.15.1.

**service pension** has the same meaning it has in subsection 5Q(1) of the *VEA*.

**SSA** means the *Social Security Act 1991*.

**top-up payment** means the payment of that name calculated under Part 3A.

**top-up qualifying condition** has the meaning given by paragraph 3A.5.2.

**VCES** means the *Veterans' Children Education Scheme* made under section 117 of the *VEA*.

**VCES payment** means an education allowance under the *VCES*.

*VEA* means the *Veterans' Entitlements Act 1986*.

*war widow(er) pension* means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to subsection 30(1) of the *VEA*.

#### **4. Paragraph 3.8.1**

*omit, substitute:*

**3.8.1** The amount of allowance for:

- (a) primary students is \$242.50 (paid annually);
- (b) secondary students who are under sixteen years and living at home is \$49.80 (paid fortnightly);
- (c) secondary students who are under sixteen years and living away from home is \$338.03 (paid fortnightly);

and is to be indexed annually in accordance with paragraph 3.8.2.

#### **5. Paragraph 3.8.2**

*omit:*

3.8.1(a) or (b)

*substitute:*

3.8.1(a), (b) or (c)

#### **5A.Paragraph 3.8.3 (including the Note)**

*omit.*

### **6. PART 3**

*after the Part, insert:*

## **PART 3A CLEAN ENERGY PAYMENTS**

### **Division 1 - Clean energy advance**

#### **Eligibility for days 14 May 2012 to 30 June 2012**

**3A.1.1** The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 14 May 2012 and ending on 30 June 2012:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and
- (c) the person is in Australia.

### **Eligibility for days 1 July 2012 to 30 June 2013**

**3A.1.2** The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 1 July 2012 and ending on 30 June 2013:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and
- (c) the person is in Australia.

### **Eligibility for days 1 July 2013 to 31 December 2013**

**3A.1.3** The *Commission* may determine that a person is eligible for a *clean energy advance* if, on a day during the period starting on 1 July 2013 and ending on 31 December 2013:

- (a) the person receives a *clean energy underlying payment*; and
- (b) the person's rate of payment is greater than nil; and
- (c) the person is in Australia.

### **First day of eligibility under paragraph 3A.1.2 or 3A.1.3**

**3A.1.4** A determination under paragraph 3A.1.2 or 3A.1.3 must specify the first day during the period set out in that paragraph for which the person:

- (a) satisfies paragraphs (a) and (b) of that paragraph; and
- (b) is in Australia, disregarding any temporary absence from Australia for a continuous period not exceeding 13 weeks.

### **Limits on eligibility for multiple advances**

**3A.1.5** A person is eligible for, at most, two clean energy advances under paragraphs 3A.1.1, 3A.1.2 and 3A.1.3:

- (a) one under either paragraph 3A.1.1 or 3A.1.2; and
- (b) one under paragraph 3A.1.3.

**3A.1.6** A person's eligibility for a *clean energy advance* is subject to paragraph 3A.10.1 (multiple entitlement exclusion).

Note: Top-up payments of *clean energy advance* may be payable under paragraph 3A.5.1 if the person's circumstances change during the person's *clean energy advance period*.

**3A.1.7** A claim is not required for a *clean energy advance*.

### **Amount of a clean energy advance**

**3A.2.1** On the day (the decision day) that the *Commission* determines that a person is eligible for a *clean energy advance* for a *clean energy underlying payment*, the *Commission* must work out the amount of the advance.

Note: The advance will be paid in a lump sum as soon as is reasonably practicable: see paragraph 3A.6.1.

**3A.2.2** The amount of the advance is the result of the following formula rounded up to the nearest multiple of \$10:

Clean energy advance daily rate × Number of advance days

where:

*clean energy advance daily rate* is worked out under paragraph 3A.3.1.

*number of advance days* is worked out under paragraph 3A.4.1.

### **Clean energy advance daily rate**

**3A.3.1** The clean energy advance daily rate for a person's *clean energy underlying payment* is worked out by:

- (a) working out 1.7% of the rate for the *clean energy underlying payment*, worked out:
  - (i) for the first day of the person's *clean energy advance period*; and
  - (ii) for someone in circumstances the same as the person's on the *clean energy advance eligibility day*; and
- (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents); and
- (c) adding 20 cents to the result of paragraph (b); and
- (d) dividing the result of paragraph (c) by 14.

### **Number of advance days**

**3A.4.1** The person's number of advance days is the number of days in the person's *clean energy advance period* that are on or after:

- (a) if the person is eligible for the *clean energy advance* before 1 July 2012 —1 July 2012; or
- (b) otherwise—the *advance eligibility day*.

### **Top-up payments of clean energy advance**

#### **3A.5.1 If:**

- (a) the Commonwealth pays a *clean energy advance* (***the original payment***) to a person; and
- (b) the person's circumstances change on a day (***the change day***) and the person satisfies any ***top-up qualifying condition*** in relation to that change of circumstances as set out in paragraph 3A.5.2; and
- (c) either
  - (i) the change of circumstances means that a higher *clean energy advance daily rate* would be used to calculate the original payment if the person's *clean energy advance eligibility day* were the *change day*; or
  - (ii) except for the provisions of a *multiple entitlement exclusion* the person would be eligible for a *clean energy bonus* under the *Act*, another *Act* or a *Commonwealth scheme*;

the person is eligible for a top-up payment calculated in accordance with paragraph 3A.5.4 – 3A.5.7.

#### **3A.5.2 For the purposes of paragraph 3A.5.1 a person satisfies a *top-up qualifying condition* if:**

- (a) the person was paid an *original payment* and as a result of the change in circumstances the person receives an *education allowance* at a higher rate in relation to the *change day* and the change of circumstances occurs before 1 January 2014; or
- (b) the person was paid an *original payment* and as a result of the change in circumstances the person no longer receives an *education allowance* but receives, before 20 March 2013:
  - (i) *service pension*; or
  - (ii) *war widow(er) pension*; or

- (iii) a payment listed in subsection 914(4) of the *Social Security Act 1991*; or
- (iv) MRCA wholly dependent partner payment; or
- (c) the person was paid an *original payment* and as a result of the change in circumstances the person no longer receives an *education allowance* but receives, before 1 January 2014:
  - (i) a payment listed in subsection 914A(5) of the *Social Security Act 1991*; or
  - (ii) a *VCES* payment; or
  - (iii) *ABSTUDY*.

**3A.5.3** Despite any other provision of the *MRCAETS* if a person received an original payment under 3A.1.3 of the *MRCAETS* and as a result of a change in circumstances the person starts to receive one of the payments listed in subsection 914(4) of the *Social Security Act 1991*, *war widow(er) pension* or *service pension* under the *VEA* or a *MRCA wholly dependent partner payment*, in relation to the *change day*, the person will not be eligible for a *top-up payment*.

#### **Method of working out the top-up payment for a person**

**3A.5.4** If the person has not previously been eligible for a *top-up payment* in relation to that *clean energy advance period*, the amount of *top-up payment* is to be calculated in accordance with the Method Statement 1 at the end of paragraph 3A.5.5.

#### **Top-up payment for first change of circumstances**

**3A.5.5** For the purposes of paragraph 3A.5.4 the *top-up payment* is to be worked out as follows:

*Method Statement 1*

Step 1: Multiply the original clean energy advance daily rate by the number of days from the original payment start day until the day before the change day.

Step 2: Multiply the new clean energy advance daily rate by the number of days remaining in the new clean energy advance period from the change day.

Step 3: Work out the sum of the amounts in steps 1 and 2.

Step 4: Round the result from Step 3 up to the nearest \$10.

Step 5: Deduct the original payment from the result of Step 4. If the result is greater than zero the result becomes the top-up payment that is payable to the person.

### **Top-up payment for subsequent change of circumstances**

**3A.5.6** If a person has previously been paid a top-up payment calculated in accordance with paragraph 3A.5.4 and the person has a further change in circumstances any additional *top-up payment* is to be calculated in accordance with paragraph 3A.5.7.

**3A.5.7** For the purposes of paragraph 3A.5.6, the method for calculating any further *top-up payment* is as follows:

#### *Method Statement 2*

Step 1: Multiply the original clean energy advance daily rate by the number of days from the original payment start day until the day before the first change day.

Step 2: Calculate the number of days from the first change day until the day before the second change day and multiply by the second clean energy advance daily rate. Repeat this step as needed for subsequent changes, excluding the most recent change day, multiplying the number of days between change days by the clean energy advance daily rate that applies as a result of the particular change in circumstances.

Step 3: Calculate the number of days from the most recent change day until the end of the new clean energy advance period and multiply by the most recent clean energy advance daily rate.

Step 4: Add up the amounts obtained in Steps 1, 2 and 3.

Step 5: Round the result from Step 4 up to the nearest \$10.

Step 6: Calculate the sum of the original payment and any previous top-up payments paid to the person under this Part.

Step 7: Deduct the result of Step 6 from result of step 5. If the result is greater than zero this becomes the top-up payment that is payable to the person.

### **Payment of clean energy advance**

**3A.6.1** An amount of clean energy advance for which a person is eligible is payable in a single lump sum on the day that the *Commission* considers to be the earliest day on which it is reasonably practicable for the amount to be paid.

**3A.6.2** However, the clean energy advance is not payable if the *Commission* is aware that the person has died.

### **Debts relating to clean energy advances**

**3A.7.1** This paragraph applies if:

- (a) a person has been paid a *clean energy advance* for a *clean*

*energy underlying payment*; and

- (b) after the advance was paid, one of the following events happens to a determination that directly or indirectly affected the payability or amount of the *clean energy advance* paid to the person:
  - (i) the determination is changed, revoked or set aside;
  - (ii) the determination is superseded by another determination; and
- (c) the event happened wholly or partly because the person knowingly made a false or misleading statement or knowingly provided false information; and
- (d) had the event happened on or before the day the advance was paid:
  - (i) the advance would not have been paid; or
  - (ii) the advance would have been reduced.

Note 1: Examples of determinations directly affecting the payability or amount of the *clean energy advance* include:

- (a) a determination relating to the person's eligibility for the *clean energy underlying payment* to which the advance related; and
- (b) the determination of the person's eligibility for the *clean energy advance*.

Note 2: An example of a determination indirectly affecting the amount of the advance is a determination relating to a change in circumstances that results in the person becoming eligible for a further payment of the advance under paragraph 3A.5.1 (top up of clean energy advance).

### **Creation and amount of debt**

**3A.8.1** The *clean energy advance* is a debt due to the Commonwealth by the person in paragraph 3A.7.1 if paragraph 3A.7.1(d)(i) applies.

**3A.8.2** The amount by which the *clean energy advance* paid to the person in paragraph 3A.7.1 would have been reduced is a debt due to the Commonwealth by the person if paragraph 3A.7.1 (d)(ii) applies.

### **Relationship with sections of Act**

**3A.9.1** The provisions of the *Act* under which debts arise do not apply in relation to clean energy advances to which paragraph 3A.7.1 applies.

## **Multiple entitlement exclusion – Clean Energy Advance**

**3A.10.1** Despite any provision of the *MRCAETS* a person is not eligible for a *clean energy advance* under the *MRCAETS*:

- (1) if the person has previously been paid, or is eligible or qualified for, a clean energy advance under:
  - (a) *ABSTUDY*; or
  - (b) the *MRCA*, in relation to a *MRCA wholly dependent partner payment*; or
  - (c) the *Social Security Act 1991*; or
  - (d) the *VCES* (in relation to the same period); or
  - (e) the *VEA*, except for a clean energy advance in relation to *disability pension*; or
- (2) if the person has previously been paid a clean energy advance under the *MRCAETS* (in relation to the same period).

**3A.10.2** A person to whom paragraph 3A.10.1 applies may still be eligible for a *top-up payment*.

## **Division 2 Clean energy supplement and quarterly clean energy supplement**

### **Clean energy supplement**

**3A.11.1** This paragraph applies to a person for a day if:

- (a) the person receives for the day a *clean energy underlying payment*; and
- (b) the person's rate of the payment is greater than nil; and
- (c) the person is residing in Australia on the day; and
- (d) on the day the person either:
  - (i) is in Australia; or
  - (ii) is temporarily absent from Australia and has been so for a continuous period not exceeding 13 weeks.

Note: paragraph 3A.15.2 (election to take quarterly clean energy supplement) may affect whether a person meets the conditions in paragraphs (a) and (b) of paragraph 3A.11.1.

### **Clean energy supplement payable**

**3A.12.1** Subject to paragraph 3A.14.1 (multiple entitlement exclusion), if paragraph 3A.11.1 applies to a person, the Commonwealth is liable to

pay the person for the day *clean energy supplement* for the person's *clean energy underlying payment*.

Note 1: The supplement is a payment separate from the *clean energy underlying payment*.

Note 2: paragraph 3A.14.1 (multiple entitlement exclusion) may affect the person's entitlement to the clean energy supplement.

## **Rate of clean energy supplement**

**3A.13.1** The rate of *clean energy supplement* for a *clean energy underlying payment* is, subject to 3A.18.1, the rate worked out by:

- (a) working out 1.7% of the *clean energy underlying payment* on 1 January 2014 (taking account of any indexation on that day); and
- (b) rounding the result of paragraph (a) up or down to the nearest multiple of 10 cents (rounding up if that result is not a multiple of 10 cents but is a multiple of 5 cents).

Note: the rate in paragraph 3A.13.1 is indexed 12 monthly in line with CPI increases (see: paragraph 3A.18.1).

**3A.13.2** A clean energy supplement is to be added to the rate of *clean energy underlying payment* of a person mentioned in paragraph 3A.11.1.

**3A.13.3** Paragraph 3A.13.2 does not apply if quarterly clean energy supplement is payable to a person to whom paragraph 3A.12.1 applies.

## **Multiple entitlement exclusion – Clean Energy Supplement**

**3A.14.1** Despite any provision of the *MRCAETS*, a person is not eligible to have a *clean energy supplement* for an *education allowance* used to calculate the person's rate of *education allowance* on a day if the person is also in receipt of a payment:

- (a) under the *VEA* – being a *war widow(er) pension*; or
- (b) under the *MRCA* – being a *MRCA wholly dependent partner payment*;

where the pension or payment under the *VEA* or *MRCA* respectively, includes a component of *clean energy supplement* covering the same instalment period for the person's *education allowance*.

## Quarterly payment of clean energy supplement

**3A.15.1** A *quarterly clean energy supplement* is payable to a person for each day for which an election by the person under paragraph 3A.15.2 is in force in relation to a *clean energy underlying payment* the person is receiving.

Note: paragraph 3A.14.1 (multiple entitlement exclusion) may affect the person's eligibility for quarterly clean energy supplement.

**3A.15.2** If paragraph 3A.12.1 applies to a person, the person may, in a manner or way approved by the *Commission*, make an election to receive the person's clean energy supplement as a quarterly payment.

**3A.15.3** An election ceases to be in force if the person ceases to receive a *clean energy underlying payment*.

**3A.15.4** The person may, in a manner or way approved by the *Commission*, revoke an election. A revocation takes effect as soon as practicable after it happens.

## Rate of quarterly clean energy supplement

**3A.16.1** A person's daily rate of *quarterly clean energy supplement*, for a particular day, is 1/14 of the amount that, apart from paragraph 3A.15.1, would be the person's *clean energy supplement* for that day.

## Payment of quarterly clean energy supplement

**3A.17.1** A *quarterly clean energy supplement* is to be paid by instalments.

**3A.17.2** An instalment of *quarterly clean energy supplement* is to be paid to a person as soon as is reasonably practicable on or after the first supplement test day (the current test day) that follows a day for which *quarterly clean energy supplement* is payable to the person.

**3A.17.3** The amount of the instalment is worked out by:

- (a) working out the amount of the person's *quarterly clean energy supplement* for each day during the test period for which *quarterly clean energy supplement* is payable to the person; and
- (b) adding up the amounts resulting from paragraph (a).

**3A.17.4** In paragraphs 3A.17.2 and 3A.17.3:

*supplement test day* means:

- (a) 20 March; or

- (b) 20 June; or
- (c) 20 September; or
- (d) 20 December.

*test period* means the period:

- (a) starting on the most recent supplement test day before the current test day; and
- (b) ending on the day immediately before the current test day.

**3A.17.5** A claim is not required for quarterly *clean energy supplement*.

### **Indexation of clean energy supplement**

**3A.18.1** The rate of *clean energy supplement* is indexed as if it was the “Clean energy (under pension age) rate 3” mentioned in item 1AG of the table in section 1190 of the *SSA* and indexed under Part 3.16 of Chapter 3 of the *SSA*.

Note: deeming the rate of *clean energy supplement* to be the Clean energy (under pension age) rate 3 means it will be taken to be the rate in item 1G of the CPI Indexation Table in subsection 1191(1) of the *SSA* and will be covered by, in addition to section 1190 of the *SSA*, sections 1191-1194 of the *SSA*.

### **Division 3 Adjustments relating to clean energy underlying payments**

#### **Special rules for indexation of clean energy underlying payments on or after 1 January 2014**

**3A.19.1** The rate of a *clean energy underlying payment* is to be adjusted in accordance with section 1206GG of the *SSA* as if, under section 1206GG, YA MBR is the rate for the *clean energy underlying payment*.

**3A.19.2** In applying section 1206GG of the *SSA*, sections 1191-1194 of the *SSA* are also to be applied as if the amount YA MBR in item 3A of the CPI Indexation Table in section 1191 is a *clean energy underlying payment*.

**3A.19.3** In applying section 1206GG of the *SSA*:

*YA MBR* means the rate for the *clean energy underlying payment*.  
*indexation factor* means the factor worked out under section 1193 of the *SSA*.

*indexation day* means the indexation day(s) in item 3A of the CPI Indexation Table in section 1191 of the *SSA*.