

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation Act Education and Training Scheme (Portability Adjustments) Determination 2012

EMPOWERING PROVISION

Subsection 258(5) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

PURPOSE

The purpose of the attached Determination (2012 No MRCC 57) is to alter the rules for eligible children who travel overseas temporarily while receiving a Clean Energy Advance (CEA) or a Clean Energy Supplement (CES) under the *Military Rehabilitation and Compensation Act Education and Training Scheme 2004* (MRCAETS).

Currently, a number of social security and veterans' affairs payments, benefits and allowances are subject to a period in which they will remain 'portable', meaning the recipient can leave Australia and continue to receive the payment, benefit or allowance for the relevant portability period. The portability period for a number of payments and benefits, under the Act and the MRCAETS is currently 13 weeks.

The Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Act 2012 has introduced portability provisions that have reduced from 13 to 6 weeks the length of time individuals can spend overseas while continuing to receive certain income support and family payments.

These amendments result in changes to the portability period applicable to the payment of CEA and CES under the MRCAETS.

Under the amending Determination the length of time an eligible child can spend overseas while continuing to receive CEA or CES will be reduced from 13 weeks to six weeks.

The 2012 Budget measure commences on 1 January 2013.

Eligible children outside of Australia at the time of commencement who have not yet received a CEA in respect of an education allowance under the MRCAETS for the 1 July 2012 to 30 June 2013 period and who are

subject to the 13 weeks portability limit will continue to have the benefit of the full 13 week period, but will then be subject to the 6 weeks portability limit upon their return to, and any departure from, Australia. The CEA for the period 1 July 2013 to 31 December 2013 will be subject to the 6 weeks portability limit upon their return to, and any departure from, Australia.

The CES is only available to eligible children on and after 1 January 2014 by which time the portability limit for the CES will be 6 weeks. Accordingly there is no need to preserve a 13 weeks portability limit for children who receive the CES because they would never have received the benefit of the extended limit.

CONSULTATION

This amendment is pursuant to a 2012 Budget measure and accordingly relevant consultation took place during the Budget process.

The Department of Veterans' Affairs consulted the Department of Families, Housing, Community Services and Indigenous Affairs. Consultation was by way of e-mail, telephone and meetings.

The Department of Veterans' Affairs also briefed the ESO Round Table at post – Budget meetings.

HUMAN RIGHTS IMPLICATIONS

The attached Determination does engage an applicable right or freedom. It relates to the right to social security. 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 amendments are as a result of the 2012 Budget process.

The attached Determination alters the rules for eligible children who travel overseas while receiving CEA or CES. Under the change, the length of time eligible children can spend overseas while continuing to receive their payments will be reduced from 13 weeks to 6 weeks.

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

The attached Determination appears to satisfy these criteria. Although limited to six weeks there is generally no limit on the number of times a person can leave Australia, as long as they continue to reside in Australia. Further, children who become eligible to receive the CEA while outside Australia at the time the new rules take effect will not be disadvantaged. They will continue to receive the benefit of the 13 weeks overseas portability limit before they lose eligibility for the CEA to be paid from eligibility date. Eligibility will resume on return to Australia. Children in this group will be subject to the 6 weeks overseas limit once they return to Australia and again travel overseas.

Conclusion

The attached Determination is considered to be compatible with human rights because it maintains the right to social security and education and the qualifying conditions it imposes on the grant of the relevant benefits are considered appropriate in the circumstances.

Warren Snowdon
Minister for Veterans' Affairs
Rule-Maker

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

FURTHER EXPLANATION

Attachment A.

Attachment A

Items	Explanation
1.	sets out the name of the Determination.
2.	provides that the Determination commences on 1 January 2013.
3.	provides that eligible children who receive the CEA and outside Australia on 1 January 2013 within the relevant 13 week period will continue to have the benefit of that 13 week period. However, children returning to Australia on or after this date, will be subject to the 6 weeks period if they again temporarily leave Australia.

Schedule

4. amends paragraph 3A.1.4(b) to substitute a reference to 13 weeks with 6 weeks in relation to a temporary absence from Australia for an eligible child eligible for CEA.
5. amends paragraph 3A.11.1(d) to substitute a reference to 13 weeks with 6 weeks in relation to a temporary absence from Australia for an eligible child who is eligible for CES.