

## Explanatory Statement

### Veterans' Entitlements (Multiple Entitlement Exclusion) Determination 2024

#### Authority

1. This instrument is made by the Repatriation Commission under subsection 65A(1) of the *Veterans' Entitlements Act 1986* (the **Act**).

#### Purpose

2. The *Veterans' Entitlements (Clean Energy Advance – Multiple Entitlement Exclusion) Determination 2012* (the **repealed instrument**) was automatically repealed on 1 October 2022. However, the repealed instrument dealt with an issue that continues to be relevant. This instrument replaces the repealed instrument.
3. The instrument is intended to avoid double payment of benefits.
4. The instrument is a legislative instrument.

#### Overview

5. A person is not entitled to be paid an energy supplement under subsection 62A(2) of the Act for a day if they received on the payment day a pension under Part II or IV of the Act at the general rate; and is paid a clean energy bonus for the payment day under section 83A of the *Military Rehabilitation and Compensation Act 2004* (the **MRC Act**).
6. Alternatively, the person would also not be entitled to be paid an energy supplement if the person: receives for the day a pension under Part II or IV of the Act at a rate other than the general rate; and is paid an energy supplement for the day under section 209A of the MRC Act.
7. A person is not entitled to be paid an energy supplement under subsection 62B(2) of the Act for a day if the person is paid an energy supplement for the day under section 238A of the MRC Act.
8. A person is not entitled to be paid an energy supplement under section 118PA of the Act for a day if the person is paid an energy supplement for the day under subsection 62B(2) of the Act or section 238A of the MRC Act.

#### Consultation

9. Given this instrument simply remakes the previous instrument and maintains extant policy, consultation on this instrument was limited.

#### Commencement

10. This instrument commences on the day after it is registered.

## Explanation of provisions

**Section 1** states the name of the instrument.

**Section 2** provides that the instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation. This has the same effect as paragraph 12(1)(a) of the *Legislation Act 2003*.

**Section 3** defines certain expressions used in this instrument. It also has a note that directs the readers to section 5Q of the Act, where they will find the definitions of other expressions used in this instrument. Because of paragraph 13(1)(b) of the *Legislation Act 2003*, those expressions need not be defined again in this instrument.

**Section 4** provides that a person is not entitled to an energy supplement under section 62A of the Act for a particular day under certain circumstances.

The circumstance under which the person is not entitled to the energy supplement is either:

- (a) the same person is entitled to receive a pension under Part II or IV of the Act at the general rate, and the person is already entitled to an energy supplement for that particular day under section 83A of the MRC Act (an ***excluded provision***); or
- (b) the same person is entitled to receive a pension under Part II or IV of the Act at a rate other than the general rate, and the person is already entitled to an energy supplement for that particular day under section 209A of the MRC Act (an ***excluded provision***).

Under this section, it is not relevant whether the person who is entitled to receive a pension and an energy supplement under an excluded provision has actually received the pension or energy supplement. It is the person's entitlement to the pension and energy supplement that is the main relevant consideration here, not the receipt of the either or both payments.

**Section 5** provides that a person is not entitled to an energy supplement under section 62B of the Act for a particular day if the same person is already entitled to an energy supplement for that particular day under section 238A of the MRC Act (an ***excluded provision***).

Under this section, it is not relevant whether the person who is entitled to an energy supplement under an excluded provision has actually received the energy supplement. It is the person's entitlement to the energy supplement that is the main relevant consideration here, not the receipt of the payment.

**Section 6** provides that a person is not entitled to an energy supplement under section 118PA of the Act for a particular day if the same person is already entitled to an energy supplement for that particular day under section 62B of the Act or section 238A of the MRC Act (an ***excluded provision***).

Under this section, it is not relevant whether the person who is entitled to an energy supplement under an excluded provision has actually received the energy supplement. It is the person's entitlement to the energy supplement that is the main relevant consideration here, not the receipt of the payment.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Veterans' Entitlements (Multiple Entitlement Exclusion) Determination 2024**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Human rights implications**

The instrument does engage an applicable right or freedom. It relates to the right to social security. The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). 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.

This compensation is intended to enable people with limited means to continue to have adequate access to essential services and would be in accordance with Australia's social security obligations under the International Covenant on Economic, Social and Cultural Rights.

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

The attached instrument appears to satisfy these criteria. It ensures that people do not receive double-entitlements where only one entitlement is intended. There is no scope for the exercise of a discretion under the instrument, the conditions are prescriptive.

#### **Conclusion**

The instrument is compatible with human rights because it does not reduce the right to social security but merely ensures the right is exercised appropriately and not used for unintended extra benefits. The conditions the instrument imposes on the relevant entitlement in this regard are considered fair and reasonable in the policy context.

Repatriation Commission  
Rule-Maker