

EXPLANATORY STATEMENT

Guide to Determining Impairment and Compensation Amendment Instrument 2025

EMPOWERING PROVISIONS

1. The Military, Rehabilitation and Compensation Commission (the **Commission**) made this instrument under subsection 67(3) of the *Military, Rehabilitation and Compensation Act 2004* (the **Act**).

PURPOSE

2. The attached instrument amends the *Guide to Determining Impairment and Compensation 2016* (**GARP M**).
3. GARP M is the guide for assessing the degree of medical impairment and lifestyle ratings when determining the permanent impairment compensation payable to a person under Part 2 of Chapter 4 of the Act.
4. Chapters 1 to 21 of GARP M deal with the assessment of the degree of medical impairment in relation to service-caused conditions.
5. Chapter 22 deals with the assessment of the lifestyle effects in relation to service-caused conditions.
6. Chapter 23 provides the methodology for converting medical impairment and lifestyle effects to compensation factors, which are then multiplied by the maximum weekly amount under the Act to find the total amount of permanent impairment compensation payable to a veteran. A different methodology applies depending on whether conditions relate to warlike/non-warlike or peacetime service, or a combination.
7. Chapter 24 provides that a veteran's determined weekly amount may be converted partially or wholly to a one-off lump sum, using instructions provided by the Australian Government Actuary.
8. Chapter 25 provides the formula for assessing and determining transitional permanent impairment claims for veterans with service injuries or diseases under the Act, and injuries or diseases under the *Veterans' Entitlements Act 1986* (**VEA**) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1986* (**DRCA**).
9. The Department of Veterans' Affairs (**DVA**) has undertaken a review of GARP M to clarify the formulas in Chapter 23 and Chapter 25.
10. The Chapter 23 Combined Ratings formula is unclear in prescribing a methodology when two or more conditions give rise to impairment ratings at A or B. In these circumstances, DVA arithmetically adds impairment ratings at A and B.
11. The Chapter 23 and 25 formulas are unclear in prescribing the type of service to be applied in transitional scenarios for veterans with service-related conditions under the Act and conditions under the VEA or the DRCA or both the VEA and the DRCA. In these circumstances, DVA treats VEA conditions as warlike/non-warlike, DRCA

conditions as peacetime, and the same condition under the VEA and DRCA as warlike/non-warlike for this purpose.

12. The purpose of the attached instrument is to ensure the formulas in Chapter 23 and Chapter 25 operate as intended in relation to their application. The instrument also fixes errors and removes superfluous references in those chapters. It does not amend any other chapter of GARP M.

CONSULTATION

13. DVA regularly consults with members of the ex-service community via the Multi-Act Working Group, which consists of representatives of the Ex-Service Organisations Round Table. Members have long expressed concern over the inadequacies of the Chapter 23 and Chapter 25 formulas and DVA has committed to rectifying this issue as soon as possible.
14. No additional consultation was necessary, as the amendments to GARP M simply clarify the application of the Chapter 23 and Chapter 25 formulas.

COMMENCEMENT

15. The instrument commences on the day after it is registered on the Federal Register of Legislation.

RETROSPECTIVITY

16. No.

Statement of Compatibility with Human Rights

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

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This Disallowable 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*.

Overview of the Disallowable Legislative Instrument

Human rights implications

This Disallowable Legislative Instrument engages and promotes the right to equality before the law because it clarifies the application of certain formulas to work out the compensation to which a veteran is entitled. It ensures that the formulas are applied in a consistent manner for all veterans who are entitled to the compensation, regardless of their personal, educational and social backgrounds.

Further, clarity in the application of the formulas would reduce the adverse impact on a veteran's mental health because the likelihood of the veteran having to dispute the amount of compensation received would be reduced. It also helps the veteran in financial planning as the amount of compensation received can be worked out more accurately.

The right to equality before the law is contained in Article 26 of the *International Covenant on Civil and Political Rights*.

Although the instrument contains formulas for calculating a person's impairment for compensation purposes and to that extent relates to a person with disabilities, the nexus is technical and has no bearing on the provision of services for people with disabilities. Accordingly, the right to full and effective participation in society, on an equal basis with others, by people with a disability, contained in the Convention on the Rights of Persons with Disabilities, is not engaged here.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not limit any human rights.

Military Rehabilitation and Compensation Commission
Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

See Attachment A.

Schedule 1—Amendments

Item 1 Chapter 23, section entitled ‘Determining the factor for compensation payment’

This item replaces the section. The changes are as follows.

In the first paragraph of the section:

- the reference to lump sum is replaced with weekly payment, to clarify that compensation is determined by multiplying the compensation factor by the maximum weekly amount payable under the Act; and
- references to provisions defining the maximum weekly amounts and indexation are added (current payment rates may be accessed on the DVA website at www.dva.gov.au).

The last paragraph is changed to refer to the different types of service.

Item 2 Chapter 23, section entitled ‘Combined ratings’

This item replaces the section. The changes are:

- minor changes to style and layout for readability;
- new content to clarify that where two or more conditions contribute to ‘A’ or ‘B’ in the formula, the ratings are arithmetically added;
- example 1 is updated to reflect contemporary payment rates; and
- new example 2 is added for ease of understanding and formula application.

Item 3 Chapter 25

This item replaces Chapter 25. The changes from the current chapter are as follows.

Chapter 25, new section ‘Introduction’

The section heading is new, and the description of the scope of Chapter 25 is clarified.

Chapter 25, section ‘Definitions’

The changes are as follows:

- references to SRCA are replaced with DRCA;
- spelling errors and references to incorrect acronyms are corrected;
- insertion of ‘accepted’ before ‘condition’ in the definition of **MRCA compensation payment**, for clarification;
- references to pension in the definition of **VEA accepted condition** are made more precise, to acknowledge the amendments made by the *Veterans’ Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Act 2021*. The references cover pensions for veterans (not pensions for

their dependants) that are commonly known as Disability Compensation Payment;
and

- removal of obsolete note referring to section 147 of the SRCA.

Chapter 25, new section ‘Assessing total MRCA PI compensation’

Insertion of a provision that **DRCA accepted conditions** are treated as peacetime conditions.

Insertion of a provision that **VEA accepted conditions** are treated as warlike or non-warlike conditions.

Insertion of a provision that the same conditions accepted under the VEA and DRCA are treated as warlike or non-warlike conditions.

Chapter 25, Steps (1) – (7)

The changes to the method statement are:

- additional wording at Step (2) to confirm the current policy for ease of understanding and application;
- minor change to wording of Step (6) for ease of understanding and application;
- minor change to wording and layout of Step (7) for ease of understanding and application; and
- definition of MRCA PI Max is added which references the maximum weekly payment of MRCA permanent impairment.

Chapter 25, ‘Conversion of DRCA lump sums’ section

The changes to this section are:

- references to SRCA are replaced with DRCA;
- minor changes to style and layout for readability; and
- information is added to direct the user to the formula in the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2020*, and to clarify that the method statement is merely a summary of the way that formula applies.