

## EXPLANATORY STATEMENT

### Veterans' Entitlements (Income Support Supplement—Permanent Incapacity for Work) Determination 2025

#### EMPOWERING PROVISION

The Repatriation Commission (the *Commission*) makes this instrument under subsection 45QA of the *Veterans' Entitlements Act 1986 (the Act)*.

#### PURPOSE

This instrument repeals the *Veterans' Entitlements (Income Support Supplement – Permanent Incapacity for Work) Determination 2015* and remakes it before it would otherwise sunset on 1 October 2025.

#### OVERVIEW

The income support supplement is a means-tested pension, subject to the income and assets tests under the Act. A person who is considered permanently incapacitated for work may be eligible for the income support supplement.

The circumstances in which a person is considered permanently incapacitated for work were formerly addressed in a now repealed section of the Act. Section 45QA of the Act now provides that the Commission must, by legislative instrument, determine the circumstances in which a person is regarded to be permanently incapacitated for work (the work test) for the purpose of the income support supplement.

This instrument provides that a person is permanently incapacitated for work if the person:

1. is permanently blind in both eyes; or
2. has a physical, intellectual or psychiatric impairment that results in the following:
  - (a) an impairment rating of 20 points or more, and
  - (b) solely because of the impairment, the person cannot, for two years, work for at least 30 hours per week at award wages or above, in work that exists in Australia, even if not available in the locally accessible labour market.

For the purpose of the instrument, impairment ratings are assessed under an Impairment Table in Part 3 of the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023* in force at the time of the assessment.

The type of work considered for the purpose of the instrument, is not necessarily the work available in the local labour market, rather the work available in Australia, i.e. is not uncommon work available in Australia. Furthermore, the work is of a kind for which award wages are, or could reasonably be expected to be, paid for that kind of work. In circumstances where award wages are not paid for the particular type of work (for example, where the type of work is

covered under an enterprise agreement, or similar), work at or above the relevant minimum wage is considered to mean award wages.

The overall policy objective of the instrument is to enable the Commission to determine if income support supplement is payable to the person on the grounds of permanent incapacity.

## EXPLANATION OF PROVISIONS

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

**Section 2** provides that the instrument commences on the day after it is registered.

**Section 3** sets out the authority for the Repatriation Commission making the instrument, namely section 45QA of the Act.

**Section 4** repeals the *Veterans' Entitlements (Income Support Supplement – Permanent Incapacity for Work) Determination 2015*.

**Section 5** provides definitions, including for the Social Security Determination, which means the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023* as in force from time to time. It also defines award wages as wages paid under a relevant award or, in circumstances where award wages are not paid for the particular type of work (for example, where the type of work is covered under an enterprise agreement, or similar), the relevant minimum wage.

**Section 6** sets out the circumstances in which a person is regarded to be permanently incapacitated for work, for the purpose of the income support supplement under the Act.

**Subsection 6(1), and (2)** provide that a person is permanently incapacitated for work, if they:

- (a) are permanently blind in both eyes; or
- (b) have a physical, intellectual or psychiatric impairment that results in:
  - (i) an impairment rating of 20 points or more as assessed under the Social Security Determination, and
  - (ii) solely because of the impairment, the person cannot, for two years, work for at least 30 hours per week at award wages or above, in work that exists in Australia.

## Consultation

In remaking the instrument, minor changes have been made to improve the clarity of the instrument which do not affect the existing policy intent of the instrument or the criteria for the work test. Consequently, the Department of Veterans' Affairs did not consult directly with individuals likely to be affected by the remake, as it was not considered necessary. This is because the changes to the instrument do not diminish the benefits available to recipients.

### **Human rights implications**

This instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

### **Making the instrument**

The instrument is made by the Repatriation Commission.

### **Approved by**

Repatriation Commission  
Rule-maker

## **Attachment A**

### **Statement of Compatibility with Human Rights**

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

#### ***Veterans' Entitlements (Income Support Supplement—Permanent Incapacity for Work) Determination 2025***

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* (the **recognised rights**).

### **Overview of the Disallowable Legislative Instrument**

The *Veterans' Entitlements (Income Support Supplement—Permanent Incapacity for Work) Determination 2025* (the **instrument**) repeals the *Veterans' Entitlements (Income Support Supplement – Permanent Incapacity for Work) Determination 2015*. The purpose of the instrument is to specify the circumstances in which a person is considered to be permanently incapacitated for work for the purpose of the income support supplement under the *Veterans' Entitlements Act 1986* (the **VEA**). A person will be regarded as permanently incapacitated for work, if the person is permanently blind in both eyes, or, has an impairment rating of 20 points and as a result, is not able to work for more than 30 hours per week for a period of two years. The type of work considered for the purpose of the instrument, is not necessarily the work available in the local labour market, rather the work available in Australia, i.e. is not uncommon work available in Australia. Furthermore, the work is of a kind for which award wages are, or could reasonably be expected to be, paid for that kind of work. In circumstances where award wages are not paid for the particular type of work (for example, where the type of work is covered under an enterprise agreement, or similar), work at or above the relevant minimum wage is considered to mean award wages.

The overall policy objective of the instrument is to set out a work test to enable the Commission to determine if income support supplement is payable to the person on the grounds of permanent incapacity.

### **Human rights implications**

This legislative instrument promotes the right to social security in article 9 of the International Covenant on Economic Social and Cultural Rights. The right to social security requires that a system be established under law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to 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 instrument promotes the provision of additional financial assistance through income support payments, for people who are permanently incapacitated for work. This supports the aims of the system in appropriately recognising an individual's capacity to financially support themselves when determining their rate of income support.

The right to social security is engaged and promoted by the instrument in that it enables a person who is permanently incapacitated for work to access additional income support under the VEA, in the form of the income support supplement.

## **Conclusion**

This legislative instrument is compatible with human rights as it engages with and promotes the right to social security.

Repatriation Commission

Rule-Maker