



2004B00175



# Military Rehabilitation and Compensation Regulations 2004

Statutory Rules 2004 No. 1

156

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Military Rehabilitation and Compensation Act 2004*.

Dated 24 JUN 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

DANNA VALE

Minister for Veterans' Affairs

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**Regulation 1**

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**Part 1 Preliminary****1 Name of Regulations**

These Regulations are the *Military Rehabilitation and Compensation Regulations 2004*.

**2 Commencement**

These Regulations commence on 1 July 2004.

**3 Definitions****(1) In these Regulations:**

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

*remunerated cadet* means an Officer of Cadets, or an Instructor of Cadets, who is remunerated for his or her service as a cadet.

*Note* *Cadet* and *declared member* are defined in section 5 of the Act, as are other expressions relevant to these Regulations.

**(2) In these Regulations, a reference to a person undertaking a period of career transition assistance means a person who, under subsection 8 (1) of the Act, is taken to be a member by reason of undertaking Career Transition Assistance under an arrangement made by the Australian Defence Force.**

## **Part 2                    Matters relating to cadets**

### **Division 1                Interpretation for Part 2**

#### **4                    Interpretation**

In this Part, a reference to a person who is in casual work means a person who:

- (a) is employed on a casual or irregular basis; and
- (b) is 16 years or over.

### **Division 2                Working out compensation for serving cadets**

#### **5                    Normal and actual earnings — cadet engaged in paid civilian work at time of incapacity (Act s 116)**

- (1) For section 116 of the Act, this regulation applies to a cadet who:
  - (a) for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) was a cadet when the service injury was sustained or the service disease was contracted; and
  - (c) was engaged in paid civilian work that was not casual work at the time of his or her incapacity; and
  - (d) is not a person who is unable to continue full-time studies or enter the workforce as a result of the incapacity.
- (2) The cadet's normal earnings for a week is the amount worked out by:
  - (a) treating the cadet as if he or she were an incapacitated Reservist mentioned in section 94 of the Act; and

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- (b) assuming, for the application of section 95 of the Act, that the cadet would have an ADF component of:
    - (i) if the person is a remunerated cadet — the total of:
      - (A) an amount determined by the Commission having regard to the cadet's rate of pay; and
      - (B) if the cadet is also a member of the Permanent Forces or the Reserves — any normal ADF pay earned by the cadet; or
    - (ii) in any other case — nil; and
  - (c) working out the amount that would be the cadet's normal earnings if the cadet were an incapacitated Reservist.
- (3) The cadet's actual earnings for a week is the amount worked out by:
- (a) treating the cadet as an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) working out, for the application of section 101 of the Act, the cadet's actual ADF pay; and
  - (c) working out the amount that would be the cadet's actual earnings if the cadet were an incapacitated Reservist.

**6                      Normal and actual earnings — cadet only engaged in casual work, or not engaged in civilian work, at time of incapacity (Act s 116)**

- (1) For section 116 of the Act, this regulation applies to a cadet who, at the time of his or her incapacity, was:
- (a) for a week referred to in this regulation, incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) a cadet when the service injury was sustained or the service disease was contracted; and
  - (c) a person who was:
    - (i) not engaged in paid civilian work; or
    - (ii) only engaged in casual work.

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- (2) The cadet's normal earnings for a week is the amount worked out by:
- (a) treating the cadet as if he or she were an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) assuming, for the application of section 95 of the Act, that the cadet would have a civilian component worked out using the following table; and

Item	Cadet's age	Cadet's circumstances	Normal earnings
1	16 or over	Cadet: <ol style="list-style-type: none"> <li>(a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and</li> <li>(b) has undertaken a rehabilitation program</li> </ol>	An amount determined by the Commission, having regard to the cadet's qualifications, skills and experience
2	Any age	Any other circumstances	Nil

- (c) assuming, for the application of section 95 of the Act, that the cadet would have an ADF component of:
    - (i) if the person is a remunerated cadet — the total of:
      - (A) an amount determined by the Commission having regard to the cadet's rate of pay; and
      - (B) if the cadet is also a member of the Permanent Forces or the Reserves — any normal ADF pay earned by the cadet; or
    - (ii) in any other case — nil; and
  - (d) working out the amount that would be the cadet's normal earnings if the cadet were an incapacitated Reservist.
- (3) The cadet's actual earnings for a week is the amount worked out by:
- (a) treating the cadet as an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) working out, for the application of section 101 of the Act, the cadet's actual ADF pay; and
  - (c) working out the amount that would be the cadet's actual earnings if the cadet were an incapacitated Reservist.

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**Division 3                      Working out compensation for  
former cadets**

**7                      Normal earnings and normal weekly hours for person  
who was a cadet — person engaged in paid civilian  
work before last ceasing to be member of Defence  
Force (Act s 175)**

- (1) For section 175 of the Act, this regulation applies to a person:
- (a) who was a cadet; and
  - (b) who, for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (c) who was a cadet when the service injury was sustained or the service disease was contracted; and
  - (d) in respect of whom the Commonwealth is liable to pay compensation under section 118 of the Act; and
  - (e) who has not chosen to receive a Special Rate Disability Pension under Part 6 of Chapter 4 of the Act; and
  - (f) who, before last ceasing to be a member of the Defence Force, was a person engaged in civilian work that was not casual work.
- (2) The person's normal earnings for a week is the amount worked out by:
- (a) treating the person as if he or she were an incapacitated person mentioned in section 152 of the Act; and
  - (b) assuming, for the application of section 153 of the Act, that the person would have an ADF component of:
    - (i) if the person was a remunerated cadet — the total of:
      - (A) an amount determined by the Commission having regard to the cadet's rate of pay; and
      - (B) if the cadet was a member of the Permanent Forces or the Reserves — any ADF pay earned by the cadet up to and including the date of discharge; or
    - (ii) in any other case — nil; and



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- (c) working out the amount that would be the person's normal earnings if the person were an incapacitated person.
- (3) The person's weekly hours are the number of hours that would be the person's normal weekly hours worked out under section 158 of the Act as if the person were an incapacitated person.
- (4) The actual earnings for a week for a person to whom this regulation applies is the amount worked out by treating the member as if he or she were a person mentioned in section 129 of the Act:
  - (a) to whom subsection 125 (1) of the Act applies; and
  - (b) if, for subsection 130 (1) of the Act, the number of hours worked by the person exceeds the number mentioned in that subsection — to whom section 130 applies; and
  - (c) whose actual earnings are worked out in accordance with section 132 of the Act.

**8 Normal earnings and normal weekly hours for person who was a cadet — person not engaged in paid civilian work, or only engaged in casual work, before last ceasing to be a member of the Defence Force (Act s 175)**

- (1) For section 175 of the Act, this regulation applies to a person:
  - (a) who was a cadet; and
  - (b) who, for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (c) who was a cadet when the service injury was sustained or the service disease was contracted; and
  - (d) in respect of whom the Commonwealth is liable to pay compensation under section 118 of the Act; and
  - (e) who has not chosen to receive a Special Rate Disability Pension under Part 6 of Chapter 4 of the Act; and
  - (f) who, before last ceasing to be a member of the Defence Force:
    - (i) did not have paid civilian work; or
    - (ii) was engaged in casual work.

**Regulation 8**

- (2) The person's normal earnings for a week is the amount worked out by:
- (a) treating the person as if he or she were an incapacitated person mentioned in section 152 of the Act; and
  - (b) assuming, for the application of section 153 of the Act, that the person would have a civilian component worked out using the following table; and

Item	Person's age	Person's circumstances	Normal earnings
1	16 or over	Person: <ul style="list-style-type: none"> <li>(a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and</li> <li>(b) has undertaken a rehabilitation program</li> </ul>	An amount determined by the Commission: <ul style="list-style-type: none"> <li>(a) having regard to the person's qualifications, skills and experience; and</li> <li>(b) assuming that the normal weekly hours of the person are 37.5 hours</li> </ul>
2	Any age	Any other circumstances	Nil

- (c) assuming, for the application of section 153 of the Act, that the person would have an ADF component of:
  - (i) if the person was a remunerated cadet — the total of:
    - (A) an amount determined by the Commission having regard to the cadet's rate of pay; and
    - (B) if the person was also a member of the Permanent Forces or the Reserves — any normal ADF pay earned by the person; or
  - (ii) in any other case — nil; and
- (d) working out the amount that would be the person's normal earnings if the person were an incapacitated person; and
- (e) working out the number of hours that would be the person's normal weekly hours as follows:
  - (i) if the person's normal weekly hours are mentioned in an item in the table — that number;
  - (ii) in any other case — as if the person were an incapacitated person.

- (3) The actual earnings for a week for a person to whom this regulation applies is the amount worked out by treating the person as if he or she were a person mentioned in section 129 of the Act:
- (a) to whom subsection 125 (1) of the Act applies; and
  - (b) if, for subsection 130 (1) of the Act, the number of hours worked by the person exceeds the number mentioned in that subsection — to whom section 130 applies; and
  - (c) whose actual earnings are worked out in accordance with section 132 of the Act.

## **Division 4                      Working out compensation for parts of weeks**

### **9                      Number of days in part of week (Act s 196)**

For paragraph (b) of the definition of *number of days* in subsection 196 (3) of the Act, the number of days for a cadet is worked out using the following table.

<b>Item</b>	<b>Cadet's circumstances</b>	<b>Number of days</b>
1	Cadet is engaged in paid employment	The number of days the cadet normally works in a week
2	Any other circumstances	5 days

## **Division 5                      Modification of Chapter 2 in relation to cadets**

### **10                      Modifications of Chapter 2 (Act s 439)**

For subsection 439 (1) of the Act, Chapter 2 of the Act is modified in its application to cadets as set out in Schedule 1.

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**Part 3 Matters relating to declared members**

**Division 1 Working out compensation for declared members**

**11 Normal and actual earnings — declared member engaged in paid civilian work at time of incapacity, who is not undertaking career transition assistance (Act s 116)**

- (1) For section 116 of the Act, this regulation applies to a declared member who:
  - (a) for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) was a declared member when the service injury was sustained or the service disease was contracted; and
  - (c) was engaged in paid civilian work at the time of his or her incapacity and is not undertaking a period of career transition assistance.
- (2) The member's normal earnings for a week is the amount worked out by:
  - (a) treating the member as if he or she were an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) assuming, for the application of section 95 of the Act, that the member would have an ADF component of nil; and
  - (c) working out the amount that would be the member's normal earnings if the member were an incapacitated Reservist.
- (3) The member's actual earnings for a week is the amount worked out by:
  - (a) treating the member as an incapacitated Reservist mentioned in section 94 of the Act; and

- (b) working out the amount that would be the member's actual civilian earnings if the member were an incapacitated Reservist.

**12 Normal and actual earnings — declared member not engaged in civilian work at time of incapacity and not undertaking career transition assistance (Act s 116)**

- (1) For section 116 of the Act, this regulation applies to a declared member who:
- (a) for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) was a declared member when the service injury was sustained or the service disease was contracted; and
  - (c) was not engaged in paid civilian work at the time of his or her incapacity, and is not undertaking career transition assistance.
- (2) The member's normal earnings for a week is the amount worked out by:
- (a) treating the member as if he or she were an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) assuming, for the application of section 95 of the Act, that the member would have a civilian component worked out using the following table.

Item	Member's age	Member's circumstances	Normal earnings
1	16 or over	Member: <ul style="list-style-type: none"><li>(a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and</li><li>(b) has undertaken a rehabilitation program</li></ul>	An amount determined by the Commission, having regard to the member's qualifications, skills and experience
2	Any age	Any other circumstances	Nil

**Regulation 13**

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- (3) The member's actual earnings for a week is the amount worked out by:
- (a) treating the member as an incapacitated Reservist mentioned in section 94 of the Act; and
  - (b) working out the amount that would be the member's actual civilian earnings if the member were an incapacitated Reservist.

**13 Normal and actual earnings — incapacitated declared member undertaking career transition assistance (Act s 116)**

- (1) For section 116 of the Act, this regulation applies to an incapacitated declared member who:
- (a) for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) was a declared member when the service injury was sustained or the service disease was contracted; and
  - (c) was undertaking a period of career transition assistance at the time of the incapacity.

*Member has not been discharged*

- (2) The normal earnings for a week for a member to whom this regulation applies, and who has not been discharged, is the amount worked out by treating the member as if he or she were:
- (a) a Permanent Forces member or continuous full-time reservist mentioned in section 91 of the Act; and
  - (b) incapacitated for service.
- (3) The actual earnings for a week for a member to whom this regulation applies, and who has not been discharged, is the amount worked out by treating the member as if he or she were:
- (a) a Permanent Forces member or continuous full-time reservist mentioned in section 92 of the Act; and
  - (b) incapacitated for service.

*Member has been discharged*

- (4) The normal earnings for a week for a member to whom this regulation applies, and who has been discharged, is the amount worked out by treating the member as if he or she were a person mentioned in section 104 of the Act who was a Permanent Forces member immediately before completing his or her last period of full-time service.
- (5) The actual earnings for a week for a member to whom this regulation applies, and who has been discharged, is the amount worked out by treating the member as if he or she were a person mentioned in section 105 of the Act, and who is incapacitated for service.

*Note* For subregulations (4) and (5) — a person who has been discharged from the Permanent Forces or the Reserves remains a ‘declared member’ while undertaking career transition assistance.

**Division 2                      Working out compensation for  
former declared members**

**14                      Normal and actual earnings — former declared  
member engaged in paid civilian work before last  
ceasing to be a member of the Defence Force, who  
has not undertaken career transition assistance  
(Act s 175)**

- (1) For section 175 of the Act, this regulation applies to a person:
  - (a) who was a declared member; and
  - (b) who, for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (c) who was a declared member when the service injury was sustained or the service disease was contracted; and
  - (d) in respect of whom the Commonwealth is liable to pay compensation under section 118 of the Act; and
  - (e) who has not chosen to receive a Special Rate Disability Pension under Part 6 of Chapter 4 of the Act; and
  - (f) who had paid civilian work before last ceasing to be a member of the Defence Force.

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- (2) The person's normal earnings for a week is the amount worked out by:
- (a) treating the person as if he or she were an incapacitated person mentioned in section 152 of the Act; and
  - (b) assuming, for the application of section 153 of the Act, that the person would have an ADF component of nil; and
  - (c) working out the amount that would be the person's normal earnings if the person were an incapacitated person; and
  - (d) working out the number of hours that would be the person's normal weekly hours if the person were an incapacitated person.
- (3) The actual earnings for a week for a member to whom this regulation applies is the amount worked out by treating the member as if he or she were a person mentioned in section 129 of the Act:
- (a) to whom subsection 125 (1) of the Act applies; and
  - (b) if, for subsection 130 (1) of the Act, the number of hours worked by the person exceeds the number mentioned in that subsection — to whom section 130 applies; and
  - (c) whose actual earnings are worked out in accordance with section 132 of the Act.

**15 Normal earnings for persons who were declared members — persons not engaged in paid civilian work before last ceasing to be a member of the Defence Force, who did not undertake career transition assistance (Act s 175)**

- (1) For section 175 of the Act, this regulation applies to a person:
- (a) who was a declared member; and
  - (b) who, for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (c) who was a declared member when the service injury was sustained or the service disease was contracted; and
  - (d) in respect of whom the Commonwealth is liable to pay compensation under section 118 of the Act; and



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- (e) who has not chosen to receive a Special Rate Disability Pension under Part 6 of Chapter 4 of the Act; and
  - (f) who did not have paid civilian work before last ceasing to be a member of the Defence Force.
- (2) The person's normal earnings for a week is the amount worked out by:
- (a) treating the person as if he or she were an incapacitated person mentioned in section 152 of the Act; and
  - (b) assuming, for the application of section 153 of the Act, that the person would have a civilian component worked out using the following table; and

Item	Person's age	Person's circumstances	Normal earnings
1	16 or over	Person: <ul style="list-style-type: none"> <li>(a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and</li> <li>(b) has undertaken a rehabilitation program</li> </ul>	An amount determined by the Commission: <ul style="list-style-type: none"> <li>(a) having regard to the person's qualifications, skills and experience; and</li> <li>(b) assuming that the normal weekly hours of the person are 37.5 hours</li> </ul>
2	Any age	Any other circumstances	Nil

- (c) assuming, for the application of section 153 of the Act, that the person would have an ADF component of nil; and
- (d) working out the amount that would be the person's normal earnings if the person were an incapacitated person; and
- (e) working out the number of hours that would be the person's normal weekly hours as follows:
  - (i) if the person's normal weekly hours are mentioned in an item in the table — that number;
  - (ii) in any other case — as if the person were an incapacitated person.

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- (3) The actual earnings for a week for a member to whom this regulation applies is the amount worked out by treating the member as if he or she were a person mentioned in section 129 of the Act:
- (a) to whom subsection 125 (1) of the Act applies; and
  - (b) if, for subsection 130 (1) of the Act, the number of hours worked by the person exceeds the number mentioned in that subsection — to whom section 130 applies; and
  - (c) whose actual earnings are worked out in accordance with section 132 of the Act.

**16            Normal and actual earnings — incapacitated former declared member who undertook career transition assistance (Act s 175)**

- (1) For section 175 of the Act, this regulation applies to an incapacitated former declared member who has completed a period of career transition assistance who:
- (a) for a week referred to in this regulation, was incapacitated for either or both service or work as a result of a service injury or disease; and
  - (b) was a declared member when the service injury was sustained or the service disease was contracted.
- (2) The normal earnings for a week for a member to whom this regulation applies is the amount worked out by treating the member as if he or she were a person mentioned in section 141 of the Act who was a Permanent Forces member immediately before last ceasing to be a member of the Defence Force.
- (3) The actual earnings for a week for a member to whom this regulation applies is the amount worked out by treating the member as if he or she were a person mentioned in section 129 of the Act:
- (a) to whom subsection 125 (1) of the Act applies; and
  - (b) if, for subsection 130 (1) of the Act, the number of hours worked by the person exceeds the number mentioned in that subsection — to whom section 130 applies; and
  - (c) whose actual earnings are worked out in accordance with section 132 of the Act.

## Division 3                      Working out compensation for parts of weeks

### 17                      Working out compensation for parts of weeks for declared members (Act s 196)

For paragraph (b) of the definition of *number of days* in subsection 196(3) of the Act, the number of days for a declared member is worked out using the following table.

Item	Member's circumstances	Number of days
1	Member on career transition assistance	5 days
2	Member is engaged in paid employment, and item 1 does not apply	The number of days the member normally works in a week
3	Any other circumstances	5 days

## Regulation 18

## Part 4                      Review by the Board of original determinations

### 18            Application of the *Veterans' Entitlements Regulations 1986*

- (1) For section 353 of the Act, regulations 2, 8A to 9AL, 9AN, 10 and 12 and Form 3 of the *Veterans' Entitlements Regulations 1986* apply, to the extent that they are regulations made for the purposes of the applied provisions specified in section 353, for the purposes of a review by the Board under Chapter 8, Part 4 of the Act.
- (2) The regulations apply subject to the modifications set out in the following table.

Item	Provision	Modification
1	Subregulation 9 (1), definition of <i>attendant</i> , paragraph (c)	A reference to the Commission has effect as a reference to the Military Rehabilitation and Compensation Commission
2	Subregulations 9 (3), (4) and (5)	A reference to the Commission has effect as a reference to the Military Rehabilitation and Compensation Commission
3	Subregulation 9 (16)	A reference to a veteran or a dependant of a deceased veteran has effect as a reference to a claimant
4	Paragraph 9 (17) (a)	A reference to a veteran or a dependant has effect as a reference to a claimant
5	Subregulation 9 (18), excluding the examples	A reference to a veteran or a dependant of a deceased veteran has effect as a reference to a claimant
6	Subregulation 9 (18), the examples	A reference to a veteran has effect as a reference to a claimant who is a member or former member

## Regulation 18

Item	Provision	Modification
7	Paragraph 9AD (a)	A reference to the Commission has effect as a reference to the Military Rehabilitation and Compensation Commission
8	Regulations 9AE, 9AF, 9AG, 9AH, 9AI, 9AJ, 9AK and 9AL	A reference to the Commission has effect as a reference to the Military Rehabilitation and Compensation Commission
9	Schedule 1, Form 3	<p>After 'VETERANS' ENTITLEMENTS REGULATIONS' insert ', as applied under regulation 15 of the <i>Military Rehabilitation and Compensation Regulations 2004</i>'</p> <p>Omit 'a decision of the Repatriation Commission' and insert 'an original determination under Part 4 of Chapter 8 of the <i>Military Rehabilitation and Compensation Act 2004</i>'</p> <p>Omit '<i>Veterans' Entitlements Act 1986</i>' and insert '<i>Veterans' Entitlements Act 1986</i>, as applied under section 353 of the <i>Military Rehabilitation and Compensation Act 2004</i>,'</p>

## Schedule 1      **Modifications of Chapter 2 of the Act in relation to cadets**

(regulation 10)

### 1      **After subsection 32 (5)**

*insert*

- (6) This section does not apply to a serious default or wilful act of a cadet under 16.

### 2      **After subsection 34 (4)**

*insert*

- (5) This section does not apply to a wilful and false representation of a cadet under 16.

### 3      **After subsection 35 (5)**

*insert*

- (6) Subsections (3), (4) and (5) do not apply to a cadet who, at the time of the injury, disease, death, aggravation or material contribution, was:
- (a) under 18; and
  - (b) under the supervision of a parent of the cadet, or a responsible adult.

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#### **Note**

1. Notified in the *Commonwealth of Australia Gazette* on      /      2004.

*25 June*