

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 299

Issued by the Authority of the Minister for Veterans' Affairs

Military Rehabilitation and Compensation Act 2004

*Military Rehabilitation and Compensation Amendment Regulations
2009 (No. 2)*

The *Military Rehabilitation and Compensation Act 2004* (the Act) provides compensation coverage for members and former members of the Defence Force, and also covers current and former cadets and declared members (these are persons specified in a ministerial determination to be members for the purposes of the Act).

Section 440 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The *Military Rehabilitation and Compensation Regulations 2004* (the Principal Regulations) provide for, among other matters, the calculation of incapacity payments for cadets and declared members who are injured as a result of their service.

The Principal Regulations set out different rules for compensating cadets/declared members engaged in paid civilian work; cadets engaged in casual work; and cadets/declared members engaged in no work at all. The Principal Regulations also set out compensation arrangements for former cadets/declared members.

Certain of the compensation rules provided that the cadet/declared member must have undertaken a rehabilitation program before he/she is eligible for incapacity payments.

However, the requirement to undertake a rehabilitation program precluded a cadet/declared member from receiving compensation whilst he or she is on the rehabilitation program. It also prevented a cadet/declared member who is unfit to undertake a rehabilitation program because, for example, he or she is in hospital, from receiving any compensation for lost earnings.

To only have allowed for compensation where a cadet/declared member has undertaken a rehabilitation program may have created significant financial hardship for such a person during the rehabilitation program, which is often of a 6-12 months duration or whilst the person is unfit to undertake a rehabilitation program.

The Regulations address these shortcomings. They make provision for a rehabilitation assessment which could enable a cadet/declared member (including a former cadet or former declared member) in certain circumstances to receive incapacity payments whilst undertaking a rehabilitation program or whilst unfit to start or continue on a rehabilitation program. The assessment could also result in a cadet/declared member (including a former cadet or former declared member) not

needing to undertake a rehabilitation program, in which case the person would become eligible for incapacity payments.

Further details of the Regulations are contained in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

The Department of Defence was consulted on the proposed changes and agreed with the proposal.

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ATTACHMENT

Details of the *Military Rehabilitation and Compensation Amendment Regulations 2009 (No. 2)*

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| Regulation 1 | provides that the name of the Regulations are the <i>Military Rehabilitation and Compensation Amendment Regulations 2009 (No. 2)</i> . |
| Regulation 2 | provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments. |
| Regulation 3 | provides that Schedule 1 amends the Principal Regulations. |

Schedule 1 - Amendments

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| Item [1] | substitutes item 1 in the table in paragraph 6(2)(b) with a new item 1. |
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New item 1 relates to a cadet engaged in casual work or not engaged in paid civilian work at the time of the cadet's service-related incapacity.

The item sets out the criteria a cadet needs to satisfy in order to be compensated for the cadet's incapacity and sets out the means for determining the amount of compensation.

The criteria are that the cadet is aged 16 years or over and:

- (a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (b) has undertaken a rehabilitation assessment; and any of the following applies:
 - the cadet has undertaken a rehabilitation program;
 - the cadet is undertaking a rehabilitation program;
 - the cadet is assessed as not currently fit to undertake a rehabilitation program; or
 - the cadet is assessed as not requiring a rehabilitation program.

The amount of compensation for a cadet's incapacity is to be worked out by the Military Rehabilitation and Compensation Commission with reference to the cadet's qualifications, skills and experience.

Item [2] substitutes item 1 in the table in paragraph 8(2)(b) with a new item 1.

New item 1 relates to a former cadet engaged in casual work or not engaged in paid civilian work at the time of the former cadet's service-related incapacity.

The item sets out the criteria a former cadet needs to satisfy in order to be compensated for the former cadet's incapacity and sets out the means for determining the amount of compensation.

The criteria are that the former cadet is aged 16 years or over and:

- (a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (b) has undertaken a rehabilitation assessment; and any of the following applies:
 - the former cadet has undertaken a rehabilitation program;
 - the former cadet is undertaking a rehabilitation program;
 - the former cadet is assessed as not currently fit to undertake a rehabilitation program; or
 - the former cadet is assessed as not requiring a rehabilitation program.

The amount of compensation for a former cadet's incapacity is to be worked out by the Military Rehabilitation and Compensation Commission with reference to the cadet's qualifications, skills and experience and on the assumption that the normal weekly hours of the former cadet are 37.5 hours.

Item [3] substitutes item 1 in the table in paragraph 12(2)(b) with a new item 1.

New item 1 relates to a declared member not engaged in paid civilian work at the time of the declared member's service-related incapacity.

The item sets out the criteria a declared member needs to satisfy in order to be compensated for the declared member's incapacity and sets out the means for determining the amount of compensation.

The criteria are that the declared member is aged 16 years or over and:

- (a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (b) has undertaken a rehabilitation assessment; and any of the following applies:
 - the declared member has undertaken a rehabilitation program;
 - the declared member is undertaking a rehabilitation program;
 - the declared member is assessed as not currently fit to undertake a rehabilitation program; or
 - the declared member is assessed as not requiring a rehabilitation program.

The amount of compensation for a declared member's incapacity is to be worked out by the Military Rehabilitation and Compensation Commission with reference to the declared member's qualifications, skills and experience.

Item [4]

substitutes item 1 in the table in paragraph 15(2)(b) with a new item 1.

New item 1 relates to a former declared member not engaged in paid civilian work at the time of the former declared member's service-related incapacity.

The item sets out the criteria a former declared member needs to satisfy in order to be compensated for the former declared member's incapacity and sets out the means for determining the amount of compensation.

The criteria are that the former declared member is aged 16 years or over and:

- (a) is unable to continue full-time studies or enter the workforce as a result of the incapacity; and
- (b) has undertaken a rehabilitation assessment; and any of the following applies:

- the former declared member has undertaken a rehabilitation program;
- the former declared member is undertaking a rehabilitation program;
- the former declared member is assessed as not currently fit to undertake a rehabilitation program; or
- the former declared member is assessed as not requiring a rehabilitation program.

The amount of compensation for a former declared member incapacity is to be worked out by the Military Rehabilitation and Compensation Commission with reference to the former declared member qualifications, skills and experience and on the assumption that the normal weekly hours of the former declared member are 37.5 hours.