

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Multiple Entitlement Exclusion) Determination 2012

The *Military Rehabilitation and Compensation (Multiple Entitlement Exclusion) Determination 2012* is made under section 424L of the *Military Rehabilitation and Compensation Act 2004* (the Act or MRCA).

Background

The *Clean Energy (Household Assistance Amendment) Act 2011* (the Household Assistance Act) makes amendments to, among other Acts, the *Military Rehabilitation and Compensation Act 2004* that includes financial assistance for increases in the cost of living arising from the introduction of a carbon price on 1 July 2012. The initial assistance will generally be delivered in a lump sum clean energy advance before commencement of the carbon pricing scheme. Ongoing, permanent clean energy supplements will be paid from the end of the clean energy advance lump sum period as a distinct component of the person's rate of pension under the Act.

Generally, the clean energy advance provisions in the Household Assistance Act apply from 14 May 2012, with most payments to be made over the period 14 May to 30 June 2012. Section 424L of the Act enables the Military Rehabilitation and Compensation Commission to determine, by legislative instrument, the circumstances in which people will not be eligible for a clean energy bonus under the Act if they have already been paid, or are qualified for, a clean energy bonus under another Act or scheme.

Purpose

The operation of the Determination is to ensure that clean energy bonuses are only paid to people who ought to receive them. The Determination sets out the circumstances in which people are not able to receive a clean energy advance or clean energy supplement under the Act if they have already received a clean energy advance or supplement under other legislation, such as the *Social Security Act 1991*, or under an administrative scheme such as ABSTUDY.

For example, without the Determination, a person who switches from a permanent impairment payment under the Act to an above general rate disability pension under the *Veterans' Entitlements Act 1986* could be eligible for a further clean energy advance that could cover part of the same clean energy advance period. This may result in the person receiving much greater assistance than is necessary to meet their increased costs of living. A person in this situation may still be eligible for a top-up payment under the *Military Rehabilitation and Compensation (Clean Energy Advance – Top-Up) Determination 2012*.

Similarly, a person who receives a clean energy advance because they are receiving a service pension under the *Veterans' Entitlements Act 1986* and who switches to a wholly dependent partner payment under the Act during the clean energy advance period, would, but for a multiple entitlement exclusion instrument, be eligible for a new clean energy advance. This may result in the person receiving much greater assistance than is necessary. It would be more appropriate to provide this person with a top-up payment rather than a further clean energy advance.

Additionally, there are some people who may receive welfare payments under more than one Act and, if they receive a clean energy supplement under more than one Act, they may receive much greater assistance than is necessary.

The Determination is a legislative instrument.

Explanation of provisions

Section 1 states the name of the Determination.

Section 2 states that the Determination commences on 14 May 2012. This date corresponds with the commencement of the provisions of the Act under which the Determination is made.

Section 3 contains the interpretation provisions.

Section 4 sets out the circumstances in which a person will not be eligible for a clean energy advance payment despite any provision in the Act.

Subsection 4(1) provides that a person will not be eligible for a clean energy advance under the Act for a wholly dependent partner payment if:

- the person has previously been paid a clean energy advance for a MRCA wholly dependent partner payment; or
- the person has previously been paid, or is eligible or qualified for, a clean energy advance under:
 - (i) ABSTUDY (education scheme for indigenous secondary and tertiary students and for apprentices); or
 - (ii) the *Military Rehabilitation and Compensation Act Education and Training Scheme* under the Act; or
 - (iii) the *Social Security Act 1991*; or
 - (iv) the *Veterans' Children Education Scheme* under the VEA; or

- (v) the VEA, except for a clean energy advance in relation to disability pension under the VEA;

unless, where the person is eligible or qualified for an advance under an Act or scheme mentioned in paragraphs (i)-(v) above (i.e. has not been paid an advance), the Military Rehabilitation and Compensation Commission forms the opinion that there is no reasonable likelihood of the person being paid an advance under those Acts or schemes because of a multiple entitlement exclusion for the Acts or schemes in which case the person is not ineligible for an advance under section 4.

The note to subsection 4(1) states it is the intention to avoid a situation where a multiple entitlement exclusion under, say, X Act, says no advance for a person under X Act if person is eligible for advance under Y Act but the multiple entitlement exclusion for Y Act says no advance for a person under Y Act if person is eligible for advance under X Act. In such a situation the person is not ineligible for an advance under the MRCA if the Military Rehabilitation and Compensation Commission decides there is no reasonable likelihood of the person being paid an advance under another Act or scheme due to a multiple entitlement exclusion for that Act or scheme.

Subsection 4(2) provides that a person will not be eligible for a clean energy advance under the Act for a permanent impairment payment under the Act if:

- the person has previously been paid a clean energy advance for a MRCA permanent impairment payment; or
- the person has previously been paid, or is eligible or qualified for, a clean energy advance under:
 - (i) the Act, in relation to Special Rate Disability Pension under the Act; or
 - (ii) the VEA, in relation to disability pension under the VEA;

unless, where the person is eligible or qualified for an advance under the MRCA for a payment mentioned in paragraphs (i)-(ii) above (i.e. has not been paid an advance), the Military Rehabilitation and Compensation Commission forms the opinion that there is no reasonable likelihood of the person being paid an advance under the MRCA or VEA in respect of the payment because of a multiple entitlement exclusion for the MRCA or the VEA in which case the person is not ineligible for an advance under section 4.

The note to paragraph 4(2)(b) states it is the intention to avoid a situation where a multiple entitlement exclusion under the MRCA says no advance for a person under the MRCA if the person is eligible for an advance under the *Veterans' Entitlements Act 1986* (VEA) but the multiple entitlement exclusion for the VEA says no advance for a person under the VEA if the person is eligible for an advance under the MRCA. In such a situation the person is not

ineligible for an advance under the MRCA if the Military Rehabilitation and Compensation Commission decides there is no reasonable likelihood of the person being paid an advance under the VEA due to a multiple entitlement exclusion for the VEA.

Subsection 4(3) provides that a person will not be eligible for a clean energy advance under the Act for a Special Rate Disability Pension under the Act if:

- the person has previously been paid a clean energy advance for a Special Rate Disability Pension; or
- the person has previously been paid, or is eligible or qualified for, a clean energy advance under:
 - (i) the Act, in relation to a permanent impairment payment under the Act; or
 - (ii) the VEA, in relation to disability pension under the VEA;

unless, where the person is eligible or qualified for an advance under the MRCA or VEA for a payment mentioned in paragraphs (i)-(ii) above (i.e. has not been paid an advance), the Military Rehabilitation and Compensation Commission forms the opinion that there is no reasonable likelihood of the person being paid an advance under the MRCA or the VEA in respect of the payments because of a multiple entitlement exclusion for the MRCA or VEA in which case the person is not ineligible for an advance under section 4.

The note to subsection 4(3) states it is the intention to avoid a situation where a multiple entitlement exclusion under the MRCA says no advance for a person under the MRCA if the person is eligible for an advance under the *Veterans' Entitlements Act 1986* (VEA) but the multiple entitlement exclusion for the VEA says no advance for a person under the VEA if the person is eligible for an advance under the MRCA. In such a situation the person is not ineligible for an advance under the MRCA if the Military Rehabilitation and Compensation Commission decides there is no reasonable likelihood of the person being paid an advance under the VEA due to a multiple entitlement exclusion for the VEA.

Subsection 4(4) provides that a person will not be eligible for a clean energy advance under the Act for a permanent impairment payment under the Act if the person is receiving a clean energy supplement under the VEA in relation to disability pension under the VEA.

Subsection 4(5) confirms that a person who is excluded from receiving a clean energy advance as a result of subsections 4(1)-(3) of the Determination may still be eligible for a top-up payment under the *Military Rehabilitation and Compensation (Clean Energy Advance – Top-Up) Determination 2012*.

Section 5 sets out the circumstances in which a person will not be eligible for a clean energy supplement under the Act despite any provision in the Act.

Subsection 5(1) provides that a person will not be eligible to have a clean energy supplement for a permanent impairment payment under the Act used to calculate the person's rate of permanent impairment payment if the person is also in receipt of a clean energy supplement in relation to disability pension under the VEA at the *CES 22(4)*, the *CES 23(4)* or the *CES 24(4)* rate (these rates are defined in the VEA) where the permanent impairment payment under the Act includes a component of clean energy supplement covering the same instalment period for the person's disability pension.

Subsection 5(2) provides that a person will not be eligible to have a clean energy supplement for a permanent impairment payment under the Act used to calculate the person's rate of permanent impairment payment if the person is also in receipt of a clean energy supplement in relation to special rate disability pension under the Act where the permanent impairment payment under the Act includes a component of clean energy supplement covering the same instalment period for the person's special rate disability pension.

Consultation

In relation to the carbon price proposal generally:

The Government established a working group of community sector leaders to help advise the Government on an assistance package for Australian households, under a carbon pricing mechanism. This Household Assistance Working Group, a sub-group advising the Multi Party Climate Change Committee, helped to inform the Government's policy-making process.

Members of the working group came from non-government organisations that represent those people the Government wanted to ensure received adequate assistance, especially people in low-income households. The Government also consulted with State and Territory Governments on aspects of household assistance to ensure it connects with and complements programs and activities already in place across the country.

The Department of Veterans' Affairs ensured that key ex-service organisations were kept informed of policy developments in relation to the carbon price proposal through the ESO Round Table. The ESO Round Table (Ex Service Organisation Round Table) is the main forum for dialogue between the Military Rehabilitation Compensation Commission, the Repatriation Commission, the Department of Veterans' Affairs and the leadership of the ESO and Defence communities.

In relation to the attached legislative instrument:

The Department of Veterans' Affairs consulted the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). FaHCSIA prepared a similar legislative instrument and is the leader among Commonwealth Government agencies in this exercise. Consultation was by way of e-mail, phone and meetings.

The Department of Veterans' Affairs also consulted the ESO Round Table. Consultation was by way of a meeting.

Documents incorporated by reference

No.

Human rights implications

The attached legislative Instrument does engage an applicable right or freedom. It relates to the right to social security. 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.

The price on carbon is expected to increase the costs of living. In particular, the costs of electricity and food. The Government has taken steps to ensure that financially vulnerable members of the community are reasonably financially compensated for increased living costs due to the price on carbon.

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 legislative 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 legislative instrument in question 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 to "double-dip" and the

conditions the instrument imposes on the relevant entitlement in this regard are considered fair and reasonable in the policy context.

Military Rehabilitation and Compensation Commission
Rule-Maker

Regulatory Impact Analysis

The Determination does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.