

1 Name of instrument

This Determination is the *Military Rehabilitation and Compensation (Multiple Entitlement Exclusion) Determination 2012*.

2. Commencement

This Determination commences on 14 May 2012.

3. Definitions

In this Determination:

ABSTUDY scheme has the same meaning as in the *Social Security Act 1991*.

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

CES 22(4) rate has the same meaning as in subsection 5GB(2) of the *VEA*.

CES 23(4) rate has the same meaning as in subsection 5GB(3) of the *VEA*.

CES 24(4) rate has the same meaning as in subsection 5GB(4) of the *VEA*.

clean energy advance has the same meaning as in the *Act*.

clean energy supplement has the same meaning as in the *Act*.

clean energy underlying payment has the same meaning as in the *Act*.

disability pension means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to Division 4 of Part II of the *VEA*.

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

MRCA permanent impairment payment means compensation payable under Part 2 of Chapter 4 of the *MRCA*.

MRCA special rate disability pension means the payment called the Special Rate Disability Pension under section 198 of the *MRCA*.

MRCA wholly dependent partner payment means the compensation payable under Division 2 of Part 2 of Chapter 5 of the *MRCA*.

MRCAETS means the *Military Rehabilitation and Compensation Act Education and Training Scheme* made under subsection 258(1) of the *Act*.

MRCAETS education allowance means an education allowance payable under the *MRCAETS*.

top-up payment means a payment made under the *Military Rehabilitation and Compensation (Clean Energy Advance – Top-Up) Determination 2012*.

VCES means the *Veterans' Children Education Scheme* made under section 117 of the *VEA*.

VEA means the *Veterans' Entitlements Act 1986*.

war widow(er) pension means a pension under Part II or IV of the *VEA* at a rate determined under or by reference to subsection 30(1) of the *VEA*.

Part 2 When a person will be excluded from eligibility for a clean energy advance

4 Clean energy advance

- (1) Despite any provision of the *Act* a person is not eligible for a *clean energy advance* under the *Act* in respect of a *clean energy underlying payment* of *MRCA wholly dependent partner payment* if:
- (a) the person has previously been paid a clean energy advance for a *MRCA wholly dependent partner payment*; or
 - (b) the person has previously been paid, or is eligible or qualified for, a clean energy advance (other advance) under:
 - (i) the *ABSTUDY* scheme; or
 - (ii) the *MRCAETS*; or
 - (iii) the *Social Security Act 1991*; or
 - (iv) the *VCES*; or
 - (v) the *VEA*, except for a clean energy advance in relation to *disability pension*:

unless, where the person is eligible or qualified for the other advance, in the opinion of the *Commission* there is no reasonable likelihood of the person being paid the other advance because of a *multiple entitlement exclusion* in which case the person is not taken to be ineligible for a *clean energy advance* by reason of this section.

Note: the intention is to avoid a situation where a person is not eligible for an advance under the *Act* because he/she is qualified for an advance under, for example, the *Social Security Act 1991* (SSA), but the multiple qualification exclusion under the SSA prevents the payment of the advance under that Act because the person is eligible for an advance under the *Veterans' Entitlements Act 1986*, leading to a stalemate.

(2) Despite any provision of the *Act* a person is not eligible for a *clean energy advance* under the *Act* in respect of a *clean energy underlying payment* of *MRCA permanent impairment payment* if:

(a) the person has previously been paid a clean energy advance for a *MRCA permanent impairment payment*; or

(b) the person has previously been paid, or is eligible or qualified for, a clean energy advance (other advance) under:

(i) the *Act*, in relation to *MRCA Special Rate Disability Pension*; or

(ii) the *VEA*, in relation to *disability pension*;

unless, where the person is eligible or qualified for the other advance, in the opinion of the *Commission* there is no reasonable likelihood of the person being paid the other advance because of a *multiple entitlement exclusion* in which case the person is not taken to be ineligible for a *clean energy advance* by reason of this section.

Note: the intention is to avoid a situation where a person is not eligible for an advance under the MRCA because he/she is eligible for an advance under the VEA but the multiple qualification exclusion under the VEA prevents the payment of the advance under the VEA because the person is eligible for an advance under the MRCA, leading to a stalemate.

(3) Despite any provision of the *Act* a person is not eligible for a *clean energy advance* under the *Act* in respect of a *clean energy underlying payment* of *MRCA Special Rate Disability Pension* if:

(a) the person has previously been paid a clean energy advance for *MRCA Special Rate Disability Pension*; or

(b) the person has previously been paid, or is eligible or qualified for, a clean energy advance (other advance) under:

(i) the *Act* in relation to *MRCA permanent impairment payment*; or

(ii) the *VEA* in relation to *disability pension*;

unless, where the person is eligible or qualified for the other advance, in the opinion of the *Commission* there is no reasonable likelihood of the person being paid the other advance because of a *multiple entitlement exclusion* in which case the person is not taken to be ineligible for a *clean energy advance* by reason of this section.

Note: the intention is to avoid a situation where a person is not eligible for an advance under the MRCA because he/she is qualified for an advance under the VEA but the multiple qualification exclusion under the VEA prevents the

payment of the advance under the VEA because the person is eligible for an advance under the MRCA, leading to a stalemate.

- (4) Despite any provision of the *Act* a person is not eligible for a *clean energy advance* under the *Act* in respect of a *clean energy underlying payment* of *MRCA permanent impairment payment* if the person is receiving a clean energy supplement under the *VEA* in relation to *disability pension*.
- (5) A person to whom subsection (1) - (3) applies may still be eligible for a *top-up payment*.

5 Clean energy supplement

- (1) Despite any provision of the *Act*, a person is not eligible to have a *clean energy supplement* for a *clean energy underlying payment* that is *MRCA permanent impairment payment* used to calculate the person's rate of *MRCA permanent impairment payment* on a day if the person is receiving a clean energy supplement in relation to *disability pension* at the *CES 22(4)*, the *CES 23(4)* or the *CES 24(4)* rate where the *MRCA permanent impairment payment* includes a component of *clean energy supplement* covering the same instalment period for the person's *disability pension*.
- (2) Despite any provision of the *Act*, a person is not eligible to have a *clean energy supplement* for a *clean energy underlying payment* that is *MRCA permanent impairment payment* used to calculate the person's rate of *MRCA permanent impairment payment* on a day if the person is receiving a clean energy supplement in relation to *MRCA special rate disability pension* where the *MRCA permanent impairment payment* includes a component of *clean energy supplement* covering the same instalment period for the person's *MRCA special rate disability pension*.