

EXPLANATORY STATEMENT

Guide to Determining Impairment and Compensation

EMPOWERING PROVISIONS

Section 67 of the *Military Rehabilitation and Compensation Act 2004*.

PURPOSE

The attached instrument (2015 No. MRCC 4) revokes and re-makes the *Guide to Determining Impairment and Compensation* (GARP M) for the purposes of the sunsetting exercise. On 1 October 2015 GARP M will “sunset” (expire) unless re-made.

The Department of Veterans’ Affairs (DVA) has performed a preliminary review of GARP M to ascertain if it is still required and found the instrument is still required. Accordingly GARP M has been re-made and apart from minor drafting changes the instrument is the same in substance as the GARP M it replaces.

It should be noted that subsection 26(1B) of the *Legislative Instruments Act 2003* (as it was known on 1 January 2015) provides that the requirement for an explanatory statement to explain the purpose and operation of an instrument may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision. Accordingly the explanation of the attached instrument is limited to the abovementioned statement that the instrument replaces GARP M in almost exactly the same form.

As a result of the preliminary assessment of GARP M, in particular whether it is “fit-for-purpose”, it is envisaged that the instrument will be more comprehensively reviewed in the future.

The main purpose, therefore, of the attached instrument is to save GARP M from sunsetting and thereby preserve the methods of working out the impairment of people who have served in Australia’s Defence Force and suffered a service-related injury or disease which entitles them to compensation.

CONSULTATION

No because the attached instrument did not change any of the impairment methodologies in the instrument it replaced. The aim was to re-make GARP M as quickly as possible before it sunsets given the significance of the instrument in determining claims for compensation, including in Courts and Tribunals.

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED-BY-REFERENCE

No.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument does not engage an applicable right or freedom. Although the instrument contains methods for working out a person's impairment for compensation purposes and to that extent relates to a person with disabilities, the nexus is technical and has no bearing on the provision of services for people with disabilities. Accordingly the Right to Full and Effective Participation in Society, on an equal basis with others, by people with a disability (Right to Full and Effective Participation in Society), contained in the Convention on the Rights of Persons with Disabilities, is not relevant .

Conclusion

The attached legislative instrument does not engage a human right and therefore is compatible with human rights.

Michael Ronaldson
Minister for Veterans' Affairs

Rule-Maker

FURTHER EXPLANATION OF NEW PROVISIONS

See: [Attachment A](#)

Attachment A

Section 1

This section sets out the name of the instrument - *Guide to Determining Impairment and Compensation*.

Section 2

This section states the short title of the instrument, namely “GARP M”.

Section 3

This section provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 4

This section states that the authority for the instrument is *the Military Rehabilitation and Compensation Act 2004*.

Remaining provisions

GARP M is to be applied to assess the impairment points due to injuries or diseases, or both, that are determined to be service related.

In making any determination on the impairment the clinical features of injuries or diseases are to be taken into account. Sequelae of conditions can only be assessed after the sequelae have been determined to be service related.

The two elements required to determine a periodic payment are medical impairment and lifestyle. Impairment is dealt with in Chapters 1 – 21 of the Guide. Lifestyle effects are dealt with separately and are described in Chapter 22 of the Guide.

Chapters 1 to 16 of the Guide contain two principal types of tables. Physical loss is to be rated against criteria in “Other Impairment” tables. Functional loss is to be rated against criteria in “Functional Loss” tables.