

1.2 Commencement

1.2.1 This instrument commences on the day after it is registered.

1.3 Name

1.3.1 This instrument is the *Motor Vehicle Compensation Scheme*.

Note: the name of the Scheme is prescribed by the *Military Rehabilitation and Compensation Act 2004* (s.212(1)).

1.4 Revocation

1.4.1 The *Motor Vehicle Compensation Scheme* (Instrument 2 of 2004) is revoked.

1.5 Transitional

1.5.1 A process commenced under the revoked Scheme (the *Motor Vehicle Compensation Scheme* (Instrument 2 of 2004)), such as lodging an application for compensation, and not finalised on the commencement of this Scheme, is to be finalised under this Scheme as if it had commenced under this Scheme.

PART 2—INTRODUCTION

2.1 Purpose of the Motor Vehicle Compensation Scheme

2.1.1 The purpose of the *Motor Vehicle Compensation Scheme* is to provide compensation relating to motor vehicles, of a kind specified in subsection 212(2) of the Act, to a person in the circumstances specified in this instrument if, in accordance with subsection 212(1) of the Act:

the person has suffered an impairment as a result of a service injury or disease for which the Commission has accepted liability; and

because of that impairment, the person has a need for compensation of that kind; and
a claim for compensation in respect of the person has been made under section 319.

2.1.2 Under subsection 212(2) of the Act the kinds of compensation relating to motor vehicles are:

modifying a motor vehicle for a person; and

maintaining or repairing modifications to a motor vehicle; and

subsidising the purchase of a motor vehicle by a person; and

purchasing a motor vehicle for a person; and

other kinds of compensation relating to motor vehicles specified in this instrument.

2.2 Interpretation

2.2.1 Definitions

2.2.1 For the purposes of this instrument, unless the contrary intention appears:

AAT, means the Administrative Appeals Tribunal.

approved program provider, in relation to a person, means an approved program provider in respect of the person under section 41 of the Act;

care institution means:

a residential care service; or

a hospital; or

a hospice; or

a psychiatric institution; or

any similar institution, however described, that provides daily care for the person;

but does not include the person's private home.

Commission means the Military Rehabilitation and Compensation Commission established by section 361 of the Act.

Department means the Department of State called the Department of Veterans' Affairs that deals with Veterans' Affairs and that is administered by the Minister for Veterans' Affairs.

eligible person means a person to whom paragraphs 212(1)(a), (b) and (c) of the Act apply.

initial motor vehicle means the first motor vehicle that the Commission has purchased for the person under this Scheme.

interest, in relation to a motor vehicle, means a joint interest in the motor vehicle or other interest but does not include an interest as a mortgagor.

previous motor vehicle means the last motor vehicle that the Commission has purchased for the person under 3.3.1 or 3.4.4 of the Scheme, as the case may be.

replacement motor vehicle means a motor vehicle in respect of which the Commission has provided a subsidy in relation to the purchase of that motor vehicle by the person as a replacement for a motor vehicle in respect of which the Commission has previously provided a subsidy.

residential care service has the meaning it has in the *Aged Care Act 1997*.

Scheme means this Motor Vehicle Compensation Scheme, prepared by the Commission under section 212 of the Act.

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

2.2.2 Notes

2.2.2 In this Scheme if a Note follows a paragraph or subparagraph, the Note is taken to be part of that paragraph or subparagraph, as the case may be.

2.3 General Operation of the Scheme

2.3.1 Scope of the Scheme

2.3.1 This Scheme allows the Commission, in the circumstances identified in the Scheme, to provide compensation to an eligible person of the following kinds:

modifying a motor vehicle for a person; and

maintaining or repairing modifications to a motor vehicle; and

subsidising the purchase of a motor vehicle for a person; and

other kinds of compensation relating to motor vehicles specified in this Scheme.

2.4 Application for compensation under the Scheme

2.4.1 Who may apply for the provision of compensation under the Scheme

2.4.1 Subject to paragraph 2.4.2, a person who satisfies the circumstances identified in paragraph 3.1.1, 3.3.1 and 3.4.4 may apply to the Commission for compensation by making an application in writing and in accordance with a form approved by the Commission for the purposes of the Scheme.

2.4.2 When an application is taken to be made

2.4.2 For the purposes of this Scheme an application for compensation will only be taken to have been made when it is received at an office of the Department in Australia.

2.4.3 Documents to accompany application

2.4.3 An application must be accompanied by any certificate and any other document that is required to be given by the person under this Scheme. If an application is not accompanied by any certificate or any other document required to be given under the Scheme, the Commission is not required to take any action in respect of the application until the certificate or document is provided.

2.4.4 Determination of application

2.4.4 If a person makes an application for compensation under this Scheme, the Commission must consider all matters that it considers relevant to the application and must then determine the application by either granting compensation in accordance with the Scheme (whether or not it is the kind of compensation sought by the person in their application) or refusing the application.

2.4.5 Commission may require an undertaking

2.4.5 The Commission may require a person who is provided with any compensation under the Scheme to give a written undertaking to comply with any conditions set out in the Scheme.

2.4.6 Compliance with the Scheme

2.4.6 For the avoidance of doubt, the conditions set out in the Scheme must be complied with even though a written undertaking has not been given in accordance with paragraph 2.4.5.

2.5 Failure to comply with provisions of the Scheme

2.5.1 Failure to comply with the Scheme

2.5.1 If the Commission is satisfied that a person has, without reasonable excuse:

knowingly provided false or misleading information to the Commission in connection with their application; or

knowingly failed to comply with a provision of the Scheme;

the Commission may determine that the person is not eligible to receive any compensation under the Scheme for a period of five (5) years from the time the Commission makes a determination under this paragraph in relation to the person.

- 2.5.2 In deciding whether to make a determination under paragraph 2.5.1, the Commission must take account of the significance of the provision of false or misleading information or the failure in respect of the provision of compensation under the Scheme and the impact on the person of the determination.

PART 3—ELIGIBILITY AND AMOUNT OF COMPENSATION

3.1 Circumstances when a person is eligible for compensation for modifying a motor vehicle

- 3.1.1 Subject to any other provision of this Part, a person is eligible for compensation to modify a motor vehicle for the person if, and only if, the Commission is satisfied that:

the person is an eligible person; and

the person is not a resident of a care institution who is not capable of leaving the care institution;

the person is able to drive or derive use of the motor vehicle at least twice in any week; and

the person either:

- (i) cannot drive a motor vehicle without driving or other modifications that enable the person to drive safely; or
- (ii) cannot be driven in a motor vehicle without modification that enables the person to be transported safely and in reasonable comfort ; and

the person owns a motor vehicle or has an interest in a motor vehicle that is capable of having driving devices fitted or modifications made for use by the person; and

if the person has an interest in a motor vehicle, any other person with an interest agrees to the motor vehicle being modified in the way proposed; and

an approved program provider or an occupational therapist has made a written recommendation to the Commission that the approved program provider or occupational therapist is satisfied on reasonable grounds that the person would derive benefit directly from:

- (i) driving a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without driving a motor vehicle; or
- (ii) being driven in a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without driving a motor vehicle.

3.2 Amount of any subsidy

- 3.2.1 The amount of any subsidy under paragraph 3.1.1, is such amount as the Commission considers is reasonable, taking account of all the other circumstances the Commission thinks are relevant, including all, or any, of the following:

the nature of the person's impairment;

the nature of proposed driving devices or modifications;

the type and cost of alternative suitable driving devices or modifications that are reasonably available and cost effective;

whether there are alternative providers of suitable driving devices or modifications that are reasonably accessible and cost effective.

3.2.2. Commission may request advice from an approved program provider or an occupational therapist

3.2.2 The Commission may request advice from an approved program provider or an occupational therapist in relation to the type of any necessary driving devices or modifications to make the motor vehicle safe and reasonably comfortable at the minimum cost.

3.2.3 The Commission may take any advice provided under paragraph 3.2.2 into account when determining the amount of any subsidy under paragraph 3.1.1.

3.3 Eligibility for a subsidy to assist the purchase of an initial new or second hand motor vehicle

3.3.1 Circumstances when a person is eligible for a subsidy

3.3.1 Subject to any other provision of this Part, a person is eligible for compensation in the form of a subsidy to assist the person to purchase an initial new or second-hand motor vehicle if:

the person is an eligible person; and

the person either:

- (i) cannot drive a motor vehicle without driving or other modifications that enable the person to drive safely; or
- (ii) cannot be driven in a motor vehicle without modification that enables the person to be transported safely and in reasonable comfort ; and

the person can establish:

- (i) where the person owns a motor vehicle or has an interest in a motor vehicle—that it is either not possible or not practicable to modify that motor vehicle; or
- (ii) where the person has not disposed of a motor vehicle owned by the person or an interest in a motor vehicle either 12 months before applying for compensation under paragraph 3.3.1 and the person has not purchased a replacement motor vehicle or a replacement interest in a motor vehicle—the person does not own a motor vehicle or have an interest in a motor vehicle; and
- (d) the person is not a resident of a care institution who is not capable of leaving the care institution; and
- (e) the person will be able to derive use of the motor vehicle at least twice in any week; and
- (f) an approved program provider or an occupational therapist has made a written recommendation to the Commission that the approved program provider or occupational therapist is satisfied on reasonable grounds that the person would derive benefit directly from:

- (i) driving a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without driving a motor vehicle; or
 - (ii) being driven in a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without access to a motor vehicle.
- 3.3.2 For the purposes of paragraph 3.3.1, a person is not to be taken to derive direct benefit through the use of the motor vehicle by another person.
- 3.3.3 The Commission may determine to grant a person compensation for modifying a motor vehicle where a person has applied for subsidy under paragraph 3.3.1 if it considers that is appropriate compensation in all the circumstances. Compensation under paragraph 3.3.1 is only to be available if modification of a person's motor vehicle or a motor vehicle in which they have an interest is not a cost effective or appropriate option.

3.4 *Determining the amount of any subsidy*

- 3.4.1 The amount of any subsidy under paragraph 3.3.1, is such amount as the Commission considers is reasonable, after deducting the trade-in value at arm's length of the person's existing motor vehicle (if any) or interest in a motor vehicle (if any) and taking account of all the other circumstances the Commission thinks are relevant, including all, or any, of the following:
- (a) the nature of the person's impairment;
 - (b) the type and cost of the motor vehicle that the person is proposing to purchase;
 - (c) the type and cost of accessories that are reasonably required for the person;
 - (d) the type and cost of alternative motor vehicles to the motor vehicle the person is proposing to purchase;
 - (e) the ability of the proposed motor vehicle to be fitted with any necessary driving devices or be otherwise modified for the person;
 - (f) in relation to a second hand motor vehicle—the number of kilometres travelled by the motor vehicle, the life of the motor vehicle and the possible application of paragraph 3.4.2.
 - (g) if the person's existing motor vehicle was stolen or destroyed through no fault on the part of the person—the full amount of the of insurer's write-off payment.

3.4.2. *Commission may request advice from an approved program provider or an occupational therapist*

- 3.4.2 The Commission may request advice from an approved program provider or an occupational therapist in relation to the type of motor vehicle, the type of any reasonable accessories and the type of any necessary driving devices or modifications to make the motor vehicle safe and reasonably comfortable at the minimum cost.
- 3.4.3 The Commission may take any advice provided under paragraph 3.4.2 into account when determining the amount of any subsidy under the Scheme.

3.4.4 *Circumstances when a person is eligible for a replacement motor vehicle*

3.4.4 Subject to any other provision of this Part, where a person has received compensation in the form of a subsidy under this Scheme to assist with the purchase of a motor vehicle, the person is eligible for compensation to assist with the purchase of a new or second hand replacement motor vehicle under this paragraph if:

- (a) the person's:
 - (i) application for compensation under paragraph 3.4.4 is made at least 5 years after the person last received compensation under paragraph 3.1.1 or 3.4.4; or
 - (ii) motor vehicle has travelled at least 100,000 kilometres after it was purchased or modified, whichever last occurred; or
 - (iii) motor vehicle that was purchased with compensation in the form of a subsidy is stolen or destroyed through no fault of the person; or
 - (iv) if the person's existing motor vehicle has not been destroyed—the person trades in or sells his or her existing motor vehicle in respect of which the person has received compensation in the form of a subsidy under this Scheme to assist with the purchase of a motor vehicle; and
- (b) an occupational therapist or other approved rehabilitation provider has made a written recommendation to the Commission that the occupational therapist is satisfied on reasonable grounds that the person would derive benefit directly from:
 - (i) driving a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without driving a motor vehicle; or
 - (ii) being driven in a motor vehicle, taking account of the benefits to the person's physical and mental health and the person's level of mobility without access to a motor vehicle; and
- (c) a qualified mechanic considers that it is appropriate to replace the person's existing vehicle taking into account the existing motor vehicle's maintenance and service history, and its condition and safety.

3.4.5 For the purposes of paragraph 3.4.4, a person is not to be taken to derive direct benefit through the use of the motor vehicle by another person.

3.4.6 *Determining the amount of any subsidy*

The amount of any subsidy under paragraph 3.4.4, is such amount as the Commission considers is reasonable, after deducting the trade-in value at arm's length of the person's existing motor vehicle (if any) and taking account of all the circumstances the Commission thinks are relevant, including all, or any, of the following:

- (a) the nature of the person's impairment;
- (b) the type and cost of the motor vehicle that the person is proposing to purchase;
- (c) the type and cost of accessories that are reasonably required for the person;
- (c) the type and cost of alternative motor vehicles to the motor vehicle the person is proposing to purchase;
- (d) the ability of the proposed motor vehicle to be fitted with any necessary driving devices or be otherwise modified for the person;

- (e) in relation to a second hand motor vehicle—the number of kilometres travelled by the motor vehicle, the life of the motor vehicle and the possible application of paragraph 3.4.7;
- (f) if the person’s existing motor vehicle was stolen or destroyed through no fault on the part of the person—the full amount of the of insurer’s write-off payment.

3.4.7. Commission may request advice from an approved program provider or an occupational therapist

- 3.4.7 The Commission may request advice from an approved program provider or an occupational therapist in relation to the type of motor vehicle, the type of any reasonable accessories and the type of any necessary driving devices or modifications to make the motor vehicle safe and reasonably comfortable at the minimum cost.
- 3.4.8 The Commission may take any advice provided under paragraph 3.4.7 into account when determining the amount of any subsidy under the Scheme.

3.5.1 Other compensation

- 3.5.1 A person is eligible for compensation in the form of a subsidy to assist the person with:
- (a) the cost of insurance insofar as the insurance only relates to any modifications or
 - (b) repairs to any modification that have been made as a result of compensation to modify a vehicle under this Scheme.

3.5.2 Amount of other compensation

- 3.5.2 The amount of compensation under paragraph 3.51 is equal to:
- (a) The cost of any additional insurance that only relates to the modifications; or
 - (b) The cost of the repairs to the modifications.

3.6.1 Motor vehicle from another scheme

- 3.6.1 A person is not eligible for compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme if the person receives or has received:
- (a) a payment or any other form of assistance for the purchase of a motor vehicle; or
 - (b) a motor vehicle; or
 - (c) the use of a motor vehicle;

under any other law, contract, agreement or understanding within 5 years before making an application for compensation under this Scheme.

3.6.2 Conditions relating to the compensation payment

- 3.6.2 If a person receives compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme, the person must:
- (a) register the motor vehicle; and
 - (b) comprehensively insure the motor vehicle to its full market value.

3.6.3 Ownership of motor vehicle

- 3.6.3 If a person receives compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme:
- (a) the person is taken to be the legal owner of the motor vehicle; and
 - (b) it is a condition of the subsidy that the Commonwealth has a chattel mortgage interest in the motor vehicle to the extent of the amount of the subsidy; and
 - (c) the motor vehicle cannot be sold, transferred, encumbered or otherwise dealt with without the written agreement of the Commonwealth or without the Commonwealth agreeing in writing to the discharge of the chattel mortgage; and
 - (d) any sale, transfer, encumbrance or other dealing without the agreement of the Commonwealth is void and of no effect as against the Commonwealth; and
 - (e) if there is a breach of any other provision of paragraph 3.6.3, the Commission may notify the person in writing that if the breach is not rectified within 30 days of receiving the notice, the amount owing under the chattel mortgage becomes a debt due and payable by the person to the Commonwealth and legal title to the motor vehicle will revert to the Commonwealth if the amount due and payable is not paid within 2 days after the end of the 30 day period and that the Commonwealth will take possession of the motor vehicle if the amount due and payable is not paid by the end of the 2 day period; and
 - (f) if a notice is given under paragraph (e) and the breach is not rectified or the amount due and payable paid by the end of the 2 day period the legal title reverts to the Commonwealth and the Commonwealth may take possession of the motor vehicle; and
 - (g) if the person had contributed an amount to the purchase of the motor vehicle at the time the motor vehicle was acquired by the person, the person is entitled to a proportionate amount of the value of the motor vehicle when the Commonwealth takes possession of the motor vehicle; and
 - (h) it is a condition of the subsidy that the person maintain the motor vehicle in good working order; and
 - (i) it is a condition of the subsidy that if the motor vehicle is damaged and the person receives any payment in respect of the damage from an insurer—the person must apply the amount of the payment towards repairing the damage to the motor vehicle or the replacement of the motor vehicle.

Subject to the operation of this Scheme in relation to future eligibility, the vehicle can be loaned at any time at the person's discretion.

3.6.4 If a person who receives compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme dies the Commonwealth's chattel mortgage is to be taken to be discharged the day after the person's death and the Commission may issue an instrument that gives effect to the discharge.

3.6.5 If a person, who receives compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme, is going to replace his or her motor vehicle under this Scheme, the Commission may discharge the chattel mortgage on the motor vehicle to facilitate the sale of the motor vehicle.

3.6.6 *Ongoing expenses relating to the motor vehicle*

- 3.6.6 Subject to paragraph 3.5.1, the person is wholly responsible for garaging, maintenance, insurance, registration, and operation of the motor vehicle if a person receives compensation in the form of a subsidy to assist with the purchase of a motor vehicle under this Scheme.

PART 4—DETERMINATION OF CLAIMS

4.1 Determination of claims for compensation under Scheme

- 4.1.1 The Commission must, in accordance with this Scheme, determine a claim for compensation under this Scheme, either granting or rejecting the claim.

PART 5—REVIEW OF DECISIONS

5.1 Review by the Commission

5.1.1 Who may seek a review

- 5.1.1 If a person is dissatisfied with any decision of the Commission in respect of an application for compensation under the Scheme, the person may apply for a review of that decision by the Commission.

5.1.2 Making a request for review

- 5.1.2 An application for review of a decision under the Scheme must be made in writing and lodged at an office of the Department in Australia within three months after the person has been served with a copy of the written decision, but not otherwise.
- 5.1.3 An application for review under paragraph 5.1.1 should set out the reasons why the decision in respect which review is sought is wrong. A failure to comply with this paragraph does invalidate the request for the review.
- 5.1.4 If a person does not set out in his or her application for review the reasons why the decision in respect of which review is sought is wrong, the Commission may, by written notice request the person to provide the reasons in writing. The Commission is not required to take any action in respect of the review until the person provides the reasons in accordance with the request.

5.1.5 Review by the Commission of its own motion

- 5.1.5 If the Commission is of the opinion that sufficient reason exists for reviewing any decision under this Scheme, the Commission may review the decision.

5.1.6 Delegate must not review own decision

- 5.1.6 If the Commission has delegated its powers under this Scheme to the person who made the decision under review, that person must not review the decision.

5.1.7 AAT Review

- 5.1.7 If a person has sought the review of a decision under paragraph 5.1.1 and the person is dissatisfied with any decision of the Commission in respect of the review, the person may apply for a review of that decision by the AAT.

PART 6—DELEGATION OF POWERS

6.1 Delegation of powers

6.1.1 *Delegation*

6.1.1 The Commission may by resolution, delegate any of its functions or powers under this Scheme, other than this power to delegate, to:

a member of the Commission; or

a member of the staff assisting the Commission; or

a consultant to, or an employee of a consultant to, the Commission.

6.1.2 *Power exercised by delegate*

6.1.2 A power delegated by the Commission under paragraph 6.1.1, when exercised by the delegate, is taken, for the purposes of this Scheme, to have been exercised by the Commission.

6.1.3 *Commission may exercise power itself*

6.1.3 A delegation of power under paragraph 6.1.1 does not prevent the exercise of a power by the Commission.