

EXPLANATORY STATEMENT

Guide to Determining Impairment and Compensation 2016 (Instrument 2016 No. MRCC37)

EMPOWERING PROVISIONS

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

PURPOSE

The attached instrument (2016 No. MRCC37) repeals and re-makes the *Guide to Determining Impairment and Compensation* (Instrument 2015 No. MRCC4).

The *Guide to Determining Impairment and Compensation* (GARP M) was recently remade for the purposes of the sunset exercise. In the course of that exercise, some earlier amendments were inadvertently omitted and the instrument as remade was in the incorrect form.

The purpose of this instrument is to remake the instrument with the omitted amendments. This instrument contains the amendments made by *GARP M (Transitional Impairment Methodology and Interim Permanent Impairment Lifestyle Methodology) Amendment Determination 2013* (Instrument 2013 No. MRCC 22).

The measures implemented by that instrument were overall beneficial in nature. They amended GARP M to:

- insert a new method of assessment of lifestyle effect for calculating interim impairment payments in Chapter 22; and
- replace the current Chapter 25 with a new Chapter 25.

The amendments to Chapter 22 made it possible for certain members of the veteran community (members and former members of the Australian Defence Force) to obtain a higher amount of interim compensation for an injury or disease under the MRCA by amending GARP M in accordance with recommendation 8.7 of the MRCA Review.

The amendments to Chapter 25 substituted a new Chapter 25 that was more favourable in relation to compensation payments to some members and former members of the Australia Defence Force than the repealed Chapter 25. Chapter 25 deals with situations where an injury or disease has been accepted under the *Veterans' Entitlements Act 1986* (VEA) and/or the *Safety Rehabilitation and Compensation Act 1988* (SRCA).

All determinations about permanent impairment made following the commencement of the GARP M sunset remake instrument (on 2 July 2015) have applied the methodologies as they appear in the correct versions of Chapter 22 and 25 thus ensuring clients obtained the benefit of these more beneficial provisions. Should any adverse effects to individual clients be identified over time, the Department will ensure that these are remedied.

The purpose of GARP M, as outlined in subsection 67(1) of the MRCA, is to set out the criteria and methodology used to assess the degree of impairment, and thus compensation payable, for entitled persons who have suffered a service related injury or disease.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate or reasonably practicable, has been undertaken.

No new policy changes are proposed in this instance. It is simply a corrective exercise to remake the instrument with the correct chapters 22 and 25 reinstated.

Consultation was not considered necessary or appropriate in these circumstances and accordingly, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

The attached instrument is a corrective exercise to include the amendments - made by *GARP M (Transitional Impairment Methodology and Interim Permanent Impairment Lifestyle Methodology) Amendment Determination 2013* (Instrument 2013 No. MRCC 22) – that were omitted in error when GARP M was remade in 2015.

To ensure these amendments remain on the statute book as intended, the attached instrument is backdated to 2 July 2015 to coincide with the commencement date of the GARP M sunset remake instrument (Instrument 2015 No. MRCC 4).

Subsection 12(2) of the *Legislation Act 2003* (legislative instrument of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person) is not contravened because the instrument does not disadvantage any person or impose a liability on any person (except the Commonwealth). The application provision (in paragraph (f) of the Schedule to the instrument) will ensure this effect.

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.

Military Rehabilitation and Compensation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: Attachment A

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument - *Guide to Determining Impairment and Compensation 2016*.

Section 2

This section provides that the short title for the instrument is GARP M.

Section 3

This section provides that the instrument is taken to have commenced on 2 July 2015. This coincides with the commencement date of the GARP M sunset remake instrument (Instrument 2015 No. MRCC 4) and is designed to ensure the amendments made by *GARP M (Transitional Impairment Methodology and Interim Permanent Impairment Lifestyle Methodology) Amendment Determination 2013* (Instrument 2013 No. MRCC 22) are reinstated with effect from the commencement date of the sunset remake instrument.

Section 4

This is a transitional provision designed to ensure a seamless transition for processes commenced under the former Guide to the re-made Guide.

Section 5

This section sets out the authorising power under which the Guide is made (section 67 the *Military Rehabilitation and Compensation Act 2004* - MRCA) and the purpose of the Guide, namely to provide a guide that will be used for the determination of the degree of impairment and lifestyle ratings when determining the compensation payable to a person under MRCA.

Section 6

This section restates the provisions of subsection 13(4) of the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* which provides that the Guide may include one or more methods of working out the amount of compensation a person is entitled to under Part 2 of Chapter 4 of the MRCA for a service injury or disease where a person also has:

- (a) a separate war-caused or defence-caused injury or disease (within the meaning of the VEA); or
- (b) a separate injury or disease (within the meaning of the SRCA).

Subsection 13(4) also provides that a method may (but does not have to) include a method of offsetting payments made to the person under the VEA or SRCA in respect of the old injury or disease.

Section 7

Section 7 provides for the application provisions in the Schedule to have effect.

Schedule

The provisions in paragraphs (a) to (e) of the Schedule apply Chapter 25 (as amended by *GARP M (Transitional Impairment Methodology and Interim Permanent Impairment Lifestyle Methodology) Amendment Determination 2013*) retrospectively to 1 July 2004. The provisions are beneficial and allow for reassessment of determined claims.

These application provisions were incorporated by the *GARP M (Transitional Impairment Methodology and Interim Permanent Impairment Lifestyle Methodology) Amendment Determination 2013*. They were omitted in error from the GARP M sunset remake instrument (Instrument 2015 No. MRCC 4). They are being reinstated as part of this corrective exercise.

New paragraph (f) of the Schedule ensures, in accordance with subsection 12(2) of the *Legislation Act 2003*, that the reinstatement of the correct Chapter 25 with effect from 2 July 2015 will not operate to disadvantage any person.

GARP M CONTENTS

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.

Introduction

The Guide includes an introduction which outlines its purpose, provides the legal background and defines terms used in the Guide.

How to Use this Guide

These pages provide an overview of the operation of the Guide and explain its main concepts including “Medical Impairment”, “Whole person impairment”, “Functional loss”, “Lifestyle effects”, “Conversion Factor Tables”, “Conditions and their Sequelae”, “Apportionment of Impairment Ratings” etc.

The section outlines the methodology for determining the amount of compensation payable by reference to the maximum compensation that can be paid under the MRCA. The maximum is specified in the Act as a weekly amount. It becomes payable only when a person’s impairment rating reaches 80 points.

The Guide includes tables that will give a compensation factor for different impairment and lifestyle ratings. The maximum compensation is multiplied by the compensation factor to give the weekly amount of compensation payable.

Medical Impairment

Medical Impairment is dealt with in Chapters 1 – 21 of the Guide.

These chapters are split into 3 parts - Parts A, B and C - which deal with System Specific Assessments, Non-system Specific Assessments, and Impairment Ratings, respectively.

Part A (Chapters 1 to 12) covers the assessment of medical impairment of system specific injuries or diseases. Medical impairment is expressed in impairment points out of a maximum rating of 100. It is measured chiefly by loss of vital functions, addressed in the following twelve chapters of the Guide:

- Cardiorespiratory Impairment
- Hypertension and Non-Cardiac Vascular Conditions
- Impairment of Spine and Limbs
- Emotional and Behavioural
- Neurological Impairment
- Gastrointestinal Impairment
- Ear, Nose and Throat Impairment
- Visual Impairment
- Renal and Urinary Tract Function
- Sexual Function, Reproduction and Breasts
- Skin Impairment
- Endocrine and Haemopoietic Impairment

Part B sets out the methodologies for assessing medical impairment for non-system specific injuries or diseases. It is arranged in 5 chapters covering the following types of impairment:

- Negligible Impairment
- Malignant Conditions
- Intermittent Impairment
- Activities of Daily Living
- Disfigurement and Social Impairment

Part C deals with miscellaneous Impairment Ratings matters. These chapters are briefly described as follows:

- Chapter 18 sets out the Combined Values Chart.

- Chapter 19 outlines the methodology to be applied for assessing a partially contributing impairment where an impairment is not due solely to the effect of accepted conditions.
- Chapter 20 outlines the methodology for the apportionment of impairment ratings where an entitled person may be assessed under multiple parts of GARP M.
- Chapter 21 sets out the policy to be applied in relation to the assessment of impairment to “paired organs” such as hearing, vision, renal function and adrenal function.

Lifestyle Effects

Lifestyle effects are dealt with separately in Chapter 22 of the Guide. A lifestyle effect is described as a disadvantage resulting from an accepted condition that limits or prevents the fulfilment of a role that is normal for an entitled person of the same age without the accepted condition.

Chapter 22 provides three options for the assessment of lifestyle effects by way of self-assessment by the veteran completing: a “Lifestyle Rating Self-Assessment Form”; or a “Lifestyle Questionnaire”; or by the determining authority allocating a lifestyle rating based on the level of medical impairment.

Chapter 22 also includes the method of assessment of lifestyle effect for calculating interim impairment payments. The effect of this is to increase interim impairment payments by including a lifestyle rating in the methodology.

Degree of Incapacity

Chapter 23 outlines the tables and methodology for calculating permanent impairment compensation.

Chapter 24 sets out the methodology for converting weekly sums into lump sums.

Chapter 25 sets out the method of working out the amount of compensation payable under MRCA for a person with an accepted *Veterans’ Entitlements Act 1986* and / or the *Safety Rehabilitation and Compensation Act 1988* injury or disease before a claim for permanent impairment is made under MRCA.

There is a cap on the maximum amount payable under the three Acts — the amount payable cannot take the total sum payable above the maximum weekly payment of the MRCA permanent impairment on the day of the determination.