

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation (Defence-related Claims) (Accelerated Access to Rehabilitation) Determination 2018 (Instrument 2018 No. MRCC57)

EMPOWERING PROVISIONS

Subsections 36(1B) and 37(1B) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the Act).

PURPOSE

The attached instrument (Instrument 2018 No. MRCC57) determines a class of persons who will be eligible for early access to rehabilitation services under the Act. The class is persons who have made a claim under section 54 of the Act and are receiving a veteran payment. They will be eligible (subject to further selection by the Military Rehabilitation and Compensation Commission (the Commission)) for early access to rehabilitation services.

Veteran payment is a form of interim income support paid by the Department of Veterans' Affairs to assist vulnerable people who might be in financial difficulty while their claim for liability for a mental health condition is determined. A condition of receiving a veteran payment is that members and former members are required to participate in a rehabilitation program. As this rehabilitation is pre-liability, it is necessary to specify persons in receipt of veteran payment as a class of persons eligible to be provided with early access to rehabilitation.

Sections 36 and 37 of the Act enable the Commission to determine a class of persons who will be eligible (subject to further selection by the Commission) for early access to rehabilitation services after the person has made a claim for compensation for an injury under Part V of the Act and before that claim has been determined.

These provisions support the principle of early intervention by providing access to rehabilitation to selected participants while their claim for compensation is being processed and liability determined.

The class determined by this instrument, for the purposes of paragraph 36(1A)(c) and paragraph 37(1A)(c) of the Act, is a person, who has made a claim under section 54 of the Act and who is receiving a veteran payment.

The Commission is further empowered (by paragraph 36(1A)(d) and paragraph 37(1A)(d) of the Act) to determine in writing that sections 36 and 37 respectively apply to a person who falls within the class determined by this instrument.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the rule-maker to be satisfied that any consultation that is considered appropriate and reasonably practicable to undertake, has been undertaken.

On 24 October 2017, the Government announced its response to the Foreign Affairs, Defence and Trade Committee's Report on the Inquiry into suicide by veterans and ex-service personnel. The response included several measures to be put in place to reduce suicide and self-harm in the veteran community, with a package of new measures to deliver better support for veterans and their families, including veteran payment.

Consultation has taken place with the Department of Education, the Department of Employment, the Department of Human Services, Treasury and the Department of Social Services.

The measure implemented by this instrument is entirely beneficial in nature in terms of its impact on members.

In these circumstances it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

None, if the attached legislative instrument is made before 1 May 2018.

If made after that date, the instrument will be taken to have commenced on 1 May 2018 and will operate retrospectively from that date.

Any such retrospective commencement will not contravene subsection 12(2) of the *Legislation Act 2003* (a provision of a legislative instrument is of no effect if it takes effect before registration and disadvantages a person or imposes liabilities on a person other than the Commonwealth) because the changes implemented by the attached instrument are beneficial in nature; the changes do not disadvantage any person or impose a liability on a person other than the Commonwealth.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached legislative instrument engages and promotes the Right to Health and the Rights of Persons with a Disability.

Right to Health

The Right to Health is contained in article 12(1) of the International Covenant on Economic Social and Cultural Rights. The Right to Health is the right to the enjoyment of the highest attainable standard of physical and mental health. The UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

Rights of Persons with a Disability

The Rights of Persons with a Disability are set out in the Convention on the Rights of Persons with Disabilities. Article 26 requires countries to organise and strengthen rehabilitation programs for people with disability, particularly in health, employment, education and social services.

Overview

The instrument enables persons who are receiving a veteran payment to access rehabilitation services while their claims are being processed and liability determined. Providing early access to appropriate rehabilitation services, will assist veteran payment recipients to achieve better health and employment outcomes. In this way the instrument can be said to engage positively with the Right to Health and the Rights of Persons with a Disability.

Conclusion

The attached instrument promotes the Right to Health and the Rights of a Person with a Disability. Accordingly, the attached instrument is considered to be “human rights compatible”.

Military Rehabilitation and Compensation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Accelerated Access to Rehabilitation) Determination 2018*.

Section 2

This section provides that the instrument commences, or is taken to have commenced, on 1 May 2018.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsections 36(1B) and 37(1B) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Section 4

This section is a purpose provision. It informs readers of the legislative intent of the instrument, namely to determine a class of persons eligible (subject to further selection by the Commission) for early access to rehabilitation services during the period from the time the person has made a claim for compensation for an injury under Part V of the Act and before liability for that claim has been determined.

The term “rehabilitation services” is defined in section 5 of the instrument to mean a rehabilitation program as defined in section 4 of the Act, or an assessment of a person’s capability to undertake a rehabilitation program as described in section 36 of the Act.

The note to section 4 informs readers that the Commission is empowered, under paragraph 36(1A)(d) of the Act to determine in writing that section 36 of the Act (Assessment of capability of undertaking rehabilitation program) applies to a person who falls within the class determined by this instrument, and, under paragraph 37(1A)(d) of the Act, to determine in writing that section 37 of the Act (Provision of rehabilitation programs) applies to a person who falls within the class determined by this instrument.

The effect of these provisions of the Act (paragraphs 36(1A)(d) and 37(1A)(d)) is to enable the Commission, by determination in writing, to select persons from the class determined by this instrument to be provided with an assessment (under section 36 of the Act) or a rehabilitation program (under section 37 Act) after the person has made a claim under Part V of the Act in relation to an injury and before that claim has been determined.

Section 5

This is the interpretation section. It defines the terms that are used in the instrument.

Section 6

Subsections 36(1B) and 37(1B) of the Act empower the Commission by legislative instrument, to determine a class of persons for the purposes of paragraphs 36(1A)(c) and paragraph 37(1A)(c) respectively.

Section 6 of the instrument determines, as a class of persons for the purposes of those paragraphs, a person who:

- has made a claim under section 54 of the Act, and
- is receiving a veteran payment.