

EXPLANATORY STATEMENT

Safety, Rehabilitation and Compensation (Defence-related Claims) (Full-time Study) Instrument 2018 (Instrument 2018 No. MRCC 76)

EMPOWERING PROVISION

Subsection 19(3AC) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA).

PURPOSE

The attached instrument specifies the circumstances for determining whether a person is undertaking full-time study for the purposes of subsection 19(3AB) of the DRCA.

The Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.2) Act 2018 amended the DRCA (and the *Military Rehabilitation and Compensation Act 2004*) to provide all former members of the Australian Defence Force (ADF) with incapacity payments at 100% of their normal weekly earnings where they are studying full-time as part of their approved Department of Veterans' Affairs (DVA) rehabilitation plan. Incapacity payments are compensation payments paid for a loss of normal earnings suffered as a result of a service-related physical or mental health condition. Normally incapacity payments "stepdown" to 75 per cent (or a higher percentage depending on weekly hours worked) of normal earnings after a period of 45 weeks.

The 2018-19 Budget included a measure to exempt former ADF members who are undertaking approved full-time study as part of their DVA rehabilitation program from the stepdown. Many rehabilitation plans have a return to work focus and some include participation in an approved study program, such as vocational or tertiary level study. The basis for the study program is to equip former members with the skills and attributes necessary, or enhance those already held, to assist them in securing ongoing sustainable employment after their ADF service. This measure ensures that former ADF members can focus on their study and not be concerned about financial matters while they study. It will cease to have effect on 1 July 2022.

The attached instrument determines the circumstances in which a person will be considered to be undertaking full-time study. A person must be undertaking a course of study that leads to the award of any of the following types of qualifications:

- a) the Senior Secondary Certificate of Education in the Australian Qualifications Framework or a qualification that is equivalent to it; or
- b) a qualification accredited at any of the following levels in the Australian Qualifications Framework:
 - Certificate I, II, III or IV;
 - diploma;
 - advanced diploma or associate degree;
 - bachelor degree;
 - bachelor honours degree, graduate certificate or graduate diploma.

Alternatively, a person must be undertaking a course of study or instruction (a bridging or preparatory course) that is necessary to complete in order to meet the requirements for entry into a course of study or instruction leading to the award of the qualification types mentioned above.

A person must be undertaking at least three-quarters of a full-time study load for a course as determined by the institution or body conducting the course. In the opinion of the Commission, a person must be making satisfactory progress towards completing the course.

Course providers for the qualification types mentioned above include technical and further education (TAFE) colleges, higher education institutions (for example, universities) and registered training organisations. The Australian Qualifications Framework (AQF) is the national policy for regulated qualifications in Australian education and training, and it incorporates different types of qualifications from each education and training sector. Introduced in 1995, the AQF underpins the national system of qualifications encompassing the higher education sector, the vocational education and training sector, and the schools sector. The AQF regulates all Australian qualifications in those sectors and officially defines the level of education that each qualification title represents.

Full-time study includes semester breaks and other breaks between an ongoing course of study. Over the break between study periods, a person would not stepdown their level of incapacity payments from 100% to 75% (or another adjusted amount). However, a person who takes an additional break from their studies, for example, defers their studies for a term or semester, would not be considered to be in full-time study and the stepdown will apply for the duration of their break.

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.

No external consultation has been undertaken on this instrument specifically. However, client feedback provided over a number of years in relation to this matter has been considered in the overall policy design. The instrument allows the implementation of a measure that is beneficial to clients and consistent with the aim of rehabilitation which is to assist individuals to obtain suitable and sustainable employment.

Consultation within DVA has been undertaken with:

- * Incapacity and Permanent Impairment Payments Branch;
- * Employment and Rehabilitation Policy Branch;
- * Eligibility and Payments Policy Branch;
- * Client Access and Rehabilitation Branch; and
- * Business Improvement and Support Branch.

Further consultation was not considered necessary as the proposal is beneficial in nature in terms of its impact on clients and does not have regulatory impacts on businesses, community organisations or individuals.

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

RETROSPECTIVITY

None.

DOCUMENTS INCORPORATED BY REFERENCE

This instrument incorporates, by reference, the Australian Qualifications Framework. The Australian Qualifications Framework that is incorporated by reference is the version of the framework as in force on the day of commencement of this instrument. This version is the Second Edition January 2013.

The Australian Qualifications Framework is freely available online at:
<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>

There is no power in the DRCA to incorporate the framework as in force from time to time.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

Human rights implications

This instrument engages the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 9 of the ICESCR, states "States Parties ... recognize the right of everyone to social security, including social insurance". General Comment 19 by the Committee on Economic, Social and Cultural Rights sets out the essential elements of the right to social security, including "States parties should ... ensure the protection of workers who are injured in the course of employment or other productive work".

This instrument also engages the right to education under Article 13 of the ICESCR, which recognises the right of everyone to education. Relevantly, it recognises that secondary education, including technical and vocational secondary education, should be made generally available and accessible to all.

Overview

The purpose of this legislative instrument is to specify the circumstances to be used for determining whether a person is undertaking full-time study for the purposes of subsection 19(3AB) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

Conclusion

This instrument enables eligible veterans to receive full incapacity payments while they participate in full-time study in certain courses identified in their DVA rehabilitation plan. The instrument will lead to greater employment outcomes for the veteran and the community.

The attached instrument engages positively with the Right to Social Security and the Right to Education, and is considered to be human rights compatible.

Military Rehabilitation and Compensation Commission
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section provides that the name of the instrument is the *Safety, Rehabilitation and Compensation (Defence-related Claims) (Full-time Study) Instrument 2018*.

Section 2

This section provides that the instrument is to commence on 1 November 2018.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely, subsection 19(3AC) of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA).

Subsection 19(3AC) of the DRCA was inserted by Schedule 1 of the *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.2) Act 2018*. Schedule 1 commences on the later of 1 November 2018 or the seventh day after the Act receives the Royal Assent. The *Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No.2) Act 2018* received the Royal Assent on 29 June 2018. This means that, at the time of the Commission making the instrument, subsection 19(3AC) had not commenced. Accordingly, the instrument is made in reliance on section 4 of the *Acts Interpretation Act 1901* which provides for the exercise of the instrument-making power as if the relevant commencement of the empowering provision had occurred.

Section 4

This section is a purpose provision. The purpose of the instrument is to determine the circumstances when a person will be considered to be undertaking full-time study for the purposes of subsection 19(3AB) of the DRCA.

Section 5

This section specifies the circumstances for determining whether a person is undertaking full-time study.

A person is undertaking full-time study if the person is enrolled in a course of study or instruction that leads to the award of any of the following types of qualifications:

- a) the Senior Secondary Certificate of Education in the Australian Qualifications Framework or a qualification that is equivalent to it; or
- b) a qualification accredited at any of the following levels in the Australian Qualifications Framework:
 - Certificate I, II, III or IV;
 - diploma;
 - advanced diploma or associate degree;
 - bachelor degree;
 - bachelor honours degree, graduate certificate or graduate diploma.

Alternatively, a person can be enrolled in a course of study or instruction that is necessary to complete in order to meet the requirements for entry into a course of study or instruction that leads to the award of any of the above qualification types.

The person must be undertaking in the particular study period (for example, a semester) for which he or she is enrolled in the course at least three-quarters of the normal amount of full-time study in respect of the course for that period. In the Commission's opinion, the person must be making satisfactory progress towards completing the course.

The normal amount of full-time study in respect of a course is the amount defined by the institution or body conducting the course that a full-time student should typically undertake in respect of the course. If the defined amount is not available, then the normal amount of full-time study is the average amount of full-time study that a person would have to undertake for the duration of the course in order to complete the course in the minimum amount of time needed to complete it.

The Australian Qualifications Framework is defined, and the definition refers to the version of the framework as in force on the day of commencement of this instrument. The version of the Australian Qualifications Framework that is in force on the day of commencement of this instrument is the Second Edition January 2013. The Australian Qualifications Framework is available at: <https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>