

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2020

EXPLANATORY STATEMENT

Issued by the Minister for Veterans' Affairs

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004

The *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004* (the Act) received Royal Assent on 27 April 2004. The Act amends laws and deals with transitional matters in connection with the *Military Rehabilitation and Compensation Act 2004* (the MRCA), which commenced on 1 July 2004.

Subsection 24(1) of the Act provides that the Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the enactment of the MRCA or the Act.

Subsection 24(3) of the Act provides that without limiting subsection (1), the regulations may provide:

- (a) that persons who are entitled to compensation under the MRCA cease to be entitled to a similar benefit under the *Veterans' Entitlements Act 1986* (VEA) or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA); and
- (b) a method of converting a lump sum amount into weekly amounts for the purpose of working out an amount of compensation payable for a service injury or disease under Parts 2 and 6 of Chapter 4 of the MRCA.

The *Military Rehabilitation and Compensation (Consequential and Transitional) Regulations 2020* (the Regulations) remake and revise the *Military Rehabilitation and Compensation (Consequential and Transitional) Regulations 2004* (the former Regulations) that will be automatically repealed on 1 April 2020 under the “sunsetting” provisions of the *Legislation Act 2003*.

The primary purpose of the Regulations is to deal with the offsetting of Special Rate Disability Pension (SRDP) payments made under the MRCA by lump sum compensation payments made under sections 24, 25 and 27 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA).

Section 6 of the Regulations describes the method of converting from a lump sum to a weekly payment, which can be offset against the weekly SRDP payment. The SRDP payment is based on the VEA special rate pension that incorporates elements of permanent impairment and economic loss compensation leading to the need to offset these SRCA payments.

Details of the regulations are set out in the [attachment](#).

The Act specifies no conditions that need to be met before the power to make the regulations may be exercised.

The regulations commence on the day after the registration of the legislative instrument.

ATTACHMENT

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2020

Section 1 provides that these regulations are to be cited as the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2020*.

Section 2 provides for the regulations to commence on the day after the instrument is registered.

Section 3 provides that the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Regulations 2020* are made under the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*.

Section 4 provides that an instrument in a Schedule to the instrument is amended or repealed in accordance with that Schedule.

Section 5 contains definitions relevant to the regulations.

Note 1 to section 5 lists those definitions used in the Regulations as having the same definition as they have in the Act. The definitions are:

- (a) DRCA;
- (b) MRCA;

Note 2 to section 5 provides for the purposes of the Regulations a reference to ‘compensation’ or ‘Special Rate Disability Pension’ will have the same meaning as in the MRCA.

Section 6 provides for the method to be used to convert lump sums paid under sections 24, 25 and 27 of the DRCA into weekly amounts.

Subsection 6(1) describes the purpose of the regulation.

The Note to subsection 6(1) provides that subsection 14(2) of the Act applies the regulations made for the purposes of paragraph 24(3)(b) of the Act (under section 7 of the Regulations).

Subsection 6(2) describes the method of converting from a current lump sum amount to a weekly amount, by dividing the current lump sum amount by an age-based number advised by the Australian Government Actuary. The age-based number refers to life expectancy (in years) as advised in the *Australian Life Tables 2015-17* (published by the Australian Government Actuary) with regard to the age of the person at the date the lump sum was paid and the gender of the person.

Subsection 6(3) describes the method of converting the lump sum to its current value, by multiplying the lump sum by the ratio of the maximum value for a lump sum paid under section 24 of the DRCA to the maximum value when the lump sum was paid.

This method applies to all lump sums, irrespective of whether they were paid under section 24, 25 or 27 of the DRCA, and give consistent results. Lump sums paid under section 25 of the DRCA are calculated by reference to the section 24 maximum value and those paid under section 27 of the DRCA are indexed using the same method as the maximum value paid under section 24.

Section 7 provides for the indexation of the weekly amount determined under section 6.

Subsection 7(1) provides that for the purposes of subsection 14(2) and paragraph 24(3)(b) of the Act that the weekly amount determined under section 6 of the Regulations is the amount by which the maximum weekly amount of SRDP is reduced in the first financial year in which SRDP is payable.

Subsection 7(2) provides that for the second and each of the subsequent financial years in which SRDP is payable that the Consumer Price Index (CPI) method of indexation as set out in section 404 of the MRCA will apply to the weekly amount determined under section 6 of the Regulations.

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the *Military Rehabilitation and Compensation (Consequential and Transitional) Regulations 2004*.

Statement of Compatibility with Human Rights

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

MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL) REGULATIONS 2020

The *Military Rehabilitation and Compensation (Consequential and Transitional) Regulations 2020* (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The primary purpose of the Regulations is to deal with the offsetting of Special Rate Disability Pension (SRDP) payments made under the *Military Rehabilitation and Compensation Act 2004* (MRCA) by lump sum compensation payments made under sections 24, 25 and 27 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (the DRCA).

The Regulations describe the method of converting those compensation payments from a lump sum to a weekly payment, which can be offset against the weekly SRDP payment. The SRDP payment is based on the *Veterans' Entitlements Act 1986* (VEA) special rate pension that incorporates elements of permanent impairment and economic loss compensation leading to the need to offset these SRCA payments.

The Regulations also provide for the indexation of the weekly amount that is determined by that conversion.

Human rights implications

Right to social security

The provisions included in the Regulations engage 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”.

Conclusion

The provisions in the Regulations are consistent with the right to social security as they promote access to social security by providing for methods to convert lump sums of compensation into weekly amounts in order to determine the amount of compensation payable as a consequence of a service injury or disease.

Darren Chester

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