

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Instrument 2021

No. MRCC20 of 2021

Summary

The *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Instrument 2021 (No. MRCC20 of 2021)* (Instrument) is made by the Military Rehabilitation and Compensation Commission (Commission) under subsection 430(3C) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

The Instrument revokes and remakes the *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Specification* (Instrument 2011 No. M7).

The purpose of the Instrument is to specify how a person's compensation under the Act must be paid to the credit of an account with a bank or to the credit of an account with a foreign corporation that takes money on deposit. In doing this, the beneficiary's compensation is safeguarded and avoids situations where the compensation could be paid into a third-party's account such as a solicitor.

Background

Who will be covered by the Instrument?

The Instrument sets out the circumstances in which a person's compensation under the Act must be paid to the credit of an account with a bank or to the credit of an account with a foreign corporation that takes money on deposit (account) as provided under subsection 430(3A).

The circumstances are:

- the compensation is within a particular category of compensation (set out below); and
- the compensation is to be paid to the person as a lump sum.

The categories of compensation are:

- (a) permanent impairment compensation, including interest, payable under subsections 79(1) and (2) of the Act;
- (b) permanent impairment compensation payable under section 80 of the Act;
- (c) incapacity compensation payment payable under section 138 of the Act;
- (d) compensation for a wholly dependent partner payable under paragraph 234(1)(a) or subparagraph 234(5) of the Act;

- (e) compensation payment for a wholly dependent partner under section 242 of the Act, the amount of which is specified under section 243 of the Act;
- (f) compensation for an eligible young person under section 251 of the Act, the amount of which is specified under section 252 of the Act;
- (g) compensation for an eligible young person under section 255 of the Act, the amount of which is specified under section 256 of the Act;
- (h) compensation for a dependant under section 262 of the Act, the amount of which is specified under section 263 of the Act;
- (i) funeral compensation under section 266 of the Act where the compensation is payable to a dependant of the deceased member, the amount of which is specified under section 267 of the Act.

The Instrument, in conjunction with section 430 of the Act is not intended, to any extent it could, to impinge on the ability of the Commission to appoint a trustee of a person's compensation under section 432 of the Act nor on the ability of the Department to pay the person's compensation to that trustee under section 433 of the Act.

Subsection 430(3D) of the Act further provides that the account where the compensation is paid, must be one that is:

- nominated, at any time, by the person for the purposes of that subsection; and
- maintained by that person which may be a joint account or one held in common with another person.

Subsection 430(3E) provides that if a person has not nominated an account for the purposes of section 430(3D), but has an existing nominated account under the *Veterans' Entitlements Act 1986*, then the existing nominated account under that Act may be used for the purposes of section 430(3E) of the Act.

Subsection 430(3F) provides that if a person subsequently nominates an account for the purposes of section 430(3D), then that account applies for the purposes of section 430 of the Act instead of the account previously nominated under the *Veterans' Entitlements Act 1986*.

Sunsetting of existing instrument

The *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Specification 2011* (Instrument 2011 No. M7) is due to sunset on 1 October 2021.

As the proposed instrument is being made on the basis that the former instrument would sunset on 1 October 2021, the Department undertook the required review of the need for the instrument to be remade or repealed. The Instrument is substantially the same and will replace the *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Specification 2011* (Instrument 2011 No. M7).

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance.

Commencement

This Instrument commences the day after it is registered on the Federal Register of Legislation.

Retrospective

No.

Statutory Pre-conditions

Apart from requirements relating to all legislative instruments (e.g. under the *Legislation Act 2003*), no statutory preconditions needed to be satisfied prior to the making of the Instrument.

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 and reasonably practicable, has been undertaken.

That process involved the participation of the relevant policy area, the Policy Development Branch, Veteran and Family Policy Division.

Regulation Impact Statement (RIS)

The Office of Best Practice Regulation has been consulted; a RIS is not required. OBPR ID Number is 44114.

Documents incorporated-by-reference

No.

Statement of Compatibility with Human Rights

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

Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Instrument 2021

This legislative instrument is compatible with the human rights and freedoms recognised or declared by the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Instrument 2021* (No. MRCC20 of 2021) (the Instrument) is made by the Military Rehabilitation and Compensation Commission (Commission) under subsection 430(3C) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

The Instrument revokes and remakes the *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Specification* (Instrument 2011 No. M7).

The purpose of the Instrument is to specify how a person's compensation under the Act must be paid to the credit of an account with a bank or to the credit of an account with a foreign corporation that takes money on deposit.

In addition, the instrument provides that the account must be nominated and maintained by the person eligible for the compensation and that the account may be a joint account or one held in common with another person.

The instrument in continuing these arrangements will ensure that the beneficiary's compensation is safeguarded and avoids situations where the compensation could be paid into a third-party's account such as a solicitor or another person who is representing the beneficiary.

The instrument is concerned only with the method in which compensation is payable to an eligible person and has no other impact on the payability of or eligibility for compensation under the Act.

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights.

Military Rehabilitation and Compensation Commission

Rule-Maker

Explanation of provisions

Section 1 provides that the name of the instrument is the *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Instrument 2021*.

Section 2 provides that the Instrument commences on the day after it is registered.

Section 3 provides that the authority for making this Instrument is subsection 430(3C) of the *Military Rehabilitation and Compensation Act 2004*.

Section 4 provides that the only definition used in the Instrument is the name of the Act.

Section 5 provides that the current instrument, *Military Rehabilitation and Compensation (Payment into Bank or Foreign Corporation Account) Specification 2011* is revoked.

Section 6 specifies, for the purposes of subsection 430(3A) of the Act, the circumstances when a person's compensation under the Act must be paid to the credit of an account with a foreign corporation that takes money on deposit (account). Subsection 430(3D) of the Act further provides the account must be nominated and maintained by that person which may be a joint account or one held in common with another person.

Subsection 430(3E) provides that if the person has an existing account under the *Veterans' Entitlements Act 1986* for the purposes of section 430, then that account may be used. The account can be subsequently updated for the purposes of section 430 under subsection 430(F).

Those circumstances are that the compensation falls within a category of compensation set out in section 6 and is to be paid to the person as a lump sum.

The Note to section 6 makes it clear that the attached Instrument is not intended to affect the operation of sections 432 and 433 of the Act. Under these provisions the Commission may appoint a trustee of a beneficiary's compensation and the compensation is to be paid to that trustee.