

EXPLANATORY STATEMENT

Military Rehabilitation and Compensation (Special Assistance) Instrument 2022

(Instrument 2022 No. MRCC3)

EMPOWERING PROVISION

Subsection 424(1) of the *Military Rehabilitation and Compensation Act 2004* (the Act).

PURPOSE

The purpose of the instrument is to enable grants to be made to assist dependants of members, former members and deceased members who would otherwise miss out on compensation or benefits due to mental illness or injury.

The Act provides a range of compensation and other benefits for certain dependants of members, former members and deceased members. This includes lump sum and periodic compensation payments, and medical treatment or compensation for medical treatment.

The Act defines the term ‘dependant’ to include an ‘eligible young person’. This covers dependants under 16 years, and dependants between 16 and 24 years who are receiving fulltime education at a school, college, university or other educational institution and who are not working fulltime.

A small number of dependants aged 16 to 24 may be unable to receive fulltime education because they have a diagnosed mental health condition. This inability may be for a period of time, or on a continuing basis. This prevents them from meeting the definition of an eligible young person, meaning there is no entitlement to compensation and benefits that would otherwise be payable under the Act.

The instrument ensures dependants in these circumstances are not disadvantaged. It does this by prescribing these particular circumstances for the purposes of section 424 of the Act. That enables the Commission to exercise its discretion in section 424 to grant assistance or benefits of the kind, and the amount or value, that it considers reasonable to a member, former member, or to a dependant of a member, former member or deceased member.

It is intended that the Commission may, in its discretion, use section 424 to grant weekly compensation payments, and provide medical treatment for all conditions at Departmental expense, for dependants who would have been entitled to treatment and compensation as an ‘eligible young person’ but for their inability to study due to a diagnosed mental health condition

It is anticipated this will form a very small cohort of persons.

The Act does not provide for merits review in situations where the Commission does not make a grant under section 424 in the prescribed circumstances, nor does the Act provide for merits review of the amount or kind of grant made. This is appropriate given the special nature of the power in section 424. Section 424 is a beneficial provision designed to address particular circumstances where a person would otherwise be disadvantaged. It provides the Commission with the power to make grants of assistance or benefits to persons who due to

their particular circumstances are unable to access compensation or benefits to which they would otherwise be legally entitled.

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 considers appropriate and reasonably practicable has been undertaken.

This instrument has been created to cover an identified gap in the legislation that disentitles a person from compensation based on a mental health condition. In order to have this legislative oversight corrected expediently, no external consultation was undertaken. However, if future legislative change is proposed in this space it will be subject to consultation with external parties.

Accordingly, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been met.

RETROSPECTIVITY

Not applicable.

DOCUMENTS INCORPORATED BY REFERENCE

No.

REGULATORY IMPACT

The Office of Best Practice Regulation (OBPR) has been consulted and a RIS is not required as it is unlikely to have more than a minor regulatory impact. The OBPR ID Number is OBPR22-01635.

FURTHER EXPLANATION OF PROVISIONS

See: [Attachment A](#)

Statement of Compatibility with Human Rights

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

Military Rehabilitation and Compensation (Special Assistance) Instrument 2022

The instrument engages the Right to Health under article 12(1), and the Right to Social Security under article 9, of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to Health

The Right to Health is contained in article 12(1) of the ICESCR. 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.

Right to Social Security

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”. The right to social security requires that a system be established under domestic law, and that public authorities must take responsibility for the effective administration of the system. The social security scheme must provide a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Overview

The instrument will enable grants of assistance and benefits, including medical treatment, in relation to dependants of veterans who would otherwise miss out on compensation and benefits due to mental illness. The instrument will impact positively on the health and living standards of dependants and their families.

Conclusion

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

FURTHER EXPLANATION OF PROVISIONS

Section 1

This section sets out the name of the instrument – the *Military Rehabilitation and Compensation (Special Assistance) Instrument 2022*.

Section 2

This is the commencement provision. It provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3

This section sets out the primary legislation that authorises the making of the instrument, namely subsection 424(1) of the *Military Rehabilitation and Compensation Act 2006*.

Section 4

This section defines terms used in the instrument, and provides that the expression “Act” means the *Military Rehabilitation and Compensation Act 2006*.

A note is included to alert readers to section 13 of the *Legislation Act 2003* which provides that expressions used in the instrument have the same meaning as in the Act. This includes the expression ‘medical practitioner’ used in section 5 of the instrument.

Section 5

This is the operative provision of the instrument. It prescribes circumstances for the purposes of subsection 424(2) of the Act. Each of the circumstances in paragraphs (a) to (e) must be present in a particular case to enable the grant power in section 424.

Paragraph (a) prescribes as a circumstance that a person is or was a dependant of a member, former member or deceased member. This person is referred to in section 5 as ‘the dependant’.

Paragraph (b) applies if the dependant has been diagnosed by a medical practitioner as suffering from a mental ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development) or a mental injury.

The term ‘medical practitioner’ is defined at section 5 of the Act to mean a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

Paragraph (c) applies if the dependant meets subparagraphs (b)(i) and (iii) of the definition of ***eligible young person*** in section 5 of the Act ie the dependant is aged 16 or more but under 25, and is not in full-time employment or engaged in work full-time on his or her own account.

Paragraph (d) applies if the dependant is unable to meet subparagraph (b)(ii) of the definition of ***eligible young person*** in section 5 of the Act solely because the mental ailment, disorder, defect or morbid condition, or mental injury, mentioned in paragraph (b), prevents the dependant from receiving full-time education at a school, college, university or other educational institution.

Subparagraph (b)(ii) of the definition of ***eligible young person*** requires that the person is receiving full-time education at a school, college, university or other educational institution.

Paragraph (e) applies if, but for the dependant's inability to meet subparagraph (b)(ii) of the definition of eligible young person due to their mental illness or injury, the dependant would have been entitled to compensation or another benefit under the Act, or would be so entitled if a claim was made in respect of that compensation or benefit.

Paragraph (e) ensures that only dependants who would otherwise have been entitled to compensation or other benefit under the Act, but for the circumstance in paragraph (d), are able to be granted assistance or benefits under section 424.