

EXPLANATORY STATEMENT

Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2023

Empowering provision

Section 37AA of the *Veterans' Entitlements Act 1986* (the *Act*).

Purpose

The Determination specifies circumstances in which a person is permanently incapacitated for work for the purposes of paragraph 37(1)(c) of the Act.

Section 37 of the Act sets out who is eligible for invalidity service pension under the Act. Invalidity service pension provides regular payments to veterans who have rendered qualifying service and who are permanently incapacitated for work in accordance with the Determination. Invalidity service pension is a type of service pension provided for by Part III of the Act, which also provides for age service pension and partner service pension.

The Determination specifies several different circumstances, or sets of circumstances, in which a person is permanently incapacitated for work for the purposes of section 37 of the Act. The circumstances are unchanged, other than minor editorial changes, from the circumstances set out in the *Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013* which the Determination repeals and replaces.

Explanation of provisions

Section 1 states the name of the Determination.

Section 2 provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 sets out the authority for making the Determination. It provides that the Determination is made under section 37AA of the Act.

Section 4 defines certain expressions used in the Determination.

Section 5 is a standard provision used in instruments that amend or repeal other instruments. It provides that Schedule 1 has the effect that the instrument specified in Schedule 1 is repealed as set out in Schedule 1.

Section 6 is a savings provision. This instrument repeals and replaces the *Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013*. Section 6 ensures someone who was permanently incapacitated for section 37 of the Act under that instrument prior to its repeal continues to be taken to be permanently incapacitated under the Determination, so their position is unaffected by the repeal.

Section 7 sets out circumstances in which a person is permanently incapacitated for work for the purposes of paragraph 37(1)(c) of the Act.

There are several different circumstances, or sets of circumstances, in which a person will be permanently incapacitated for work. One or more of the circumstances set out in paragraph 7(a) must apply to the person, or the person must meet all of the circumstances in paragraph 7(b).

The circumstances in paragraph 7(a), at least one of which must be met, are that:

- the person is permanently blind in both eyes;
- the person is receiving a special rate of pension under section 24 of the Act;
- the person is receiving a Special Rate Disability Pension under the *Military Rehabilitation and Compensation Act 2004 (MRCA)*, as defined in section 198 of the MRCA;
- the person would receive a Special Rate Disability Pension if not for offsets under section 204 or 415 of the MRCA;
- the Military Rehabilitation and Compensation Commission is satisfied the person meets the eligibility criteria in subsection 199(1) of the MRCA for a Special Rate of Disability Pension.

Paragraph 7(b) applies if all of the following circumstances apply to the person:

- the person has an impairment that would result in a combined impairment rating of 40 or more under Table 18.1 of the *Approved Guide to the Assessment of Rates of Veterans' Pensions* made under subsection 29(3) of the Act; and
- the person is permanently unable to work for more than 8 hours a week because of the impairment; and
- the Repatriation Commission is satisfied that the impairment is permanent.

Schedule 1—Repeals

Item 1 repeals the *Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013* as it is replaced by the Determination.

Consultation

As the prescribed circumstances in the instrument are unchanged, other than minor editorial changes, from the circumstances set out in the *Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013* which the Determination repeals and replaces, no consultation was undertaken.

Incorporation by reference

The Determination refers to the *Approved Guide to the Assessment of Rates of Veterans' Pensions* made under subsection 29(3) of the Act, and incorporates provisions of the Approved Guide into the Determination. The Approved Guide is disallowable legislative instrument and is incorporated into the Determination as in force from time to time in accordance with subsection 14(1) of the *Legislation Act 2003*.

A copy of the Approved Guide is freely available on the Federal Register of Legislation at [Guide to the Assessment of Rates of Veterans' Pensions \(No. 2\) 2016 \(legislation.gov.au\)](#)

Regulatory Impact Analysis

The Determination is not regulatory in nature, will not impact on business activity and there will be no additional compliance costs. The Determination will have no, or minimal, competition impacts.

HUMAN RIGHTS STATEMENT

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

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The Determination is 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*. The Instrument engages, and is compatible with, the right to social security under article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR), the right to just and favourable conditions of work under article 7 of the ICESCR, and the right to an adequate standard of living under article 11 of the ICESCR.

The right to social security requires a social security system be established and that a country must, within its maximum available resources, ensure access to a social security scheme that provides 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.

The right to an adequate standard of living in article 11 of the ICESCR relates to an adequate standard of living for every person and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The right to work in article 7 of ISESCR includes a right to just and favourable conditions of employment, including that workers are provided with safe and healthy working conditions.

The Determination specifies circumstances in which a person is permanently incapacitated for work for the purposes of paragraph 37(1)(c) of the Act.

Section 37 of the Act sets out who is eligible for invalidity service pension under the Act. Invalidity service pension provides regular payments to veterans who have rendered qualifying service and who are permanently incapacitated for work in accordance with the Determination. Invalidity service pension is a type of service pension provided for by Part III of the Act, which also provides for age service pension and partner service pension.

The Determination specifies several different circumstances, or sets of circumstances, in which a person is permanently incapacitated for work for the purposes of section 37 of the Act. The circumstances are unchanged, other than minor editorial changes, from the circumstances set out in the *Veterans' Entitlements (Invalidity Service Pension — Permanent Incapacity for Work) Determination 2013* which the Determination repeals and replaces.

The Determination forms part of the legislative framework providing invalidity pension for veterans who are permanently incapacitated for work as a result of injury or disease in connection with their service. It therefore promotes the right to social

security, the right to just and favourable conditions of work, and the right to an adequate standard of living. However by setting out requirements for when a person is considered to be permanently incapacitated, the instrument also limits those rights in relation to persons who do not come within those requirements. This limitation is necessary and proportionate. It balances the three rights set out above with the resources of the community. The requirements specified in the instrument for when a person is permanently incapacitated are reasonable. The instrument replicates the requirements in the instrument it repeals and replaces, with only minor editorial changes but no substantive changes. It therefore does not constitute a backwards or retrogressive step in relation to the rights.

CONCLUSION

The instrument is compatible with the right to social security, the right to just and favourable conditions of work, and the right to an adequate standard of living.

**Repatriation Commission
Rule-Maker**