

## **Explanatory Statement**

### **Military Rehabilitation and Compensation (Multiple Entitlement Exclusion) Determination 2024**

#### **Authority**

1. This instrument is made by the Military Rehabilitation and Compensation Commission under subsection 424L(1) of the *Military Rehabilitation and Compensation Act 2004* (the *Act*).

#### **Purpose**

2. The *Military Rehabilitation and Compensation (Multiple Entitlement Exclusion) Determination 2012* (the **repealed instrument**) automatically repealed on 1 October 2022. However, the repealed instrument dealt with an issue that continues to be relevant. This instrument replaces the repealed instrument.
3. This instrument is intended to avoid double payment of benefits.
4. This instrument is a legislative instrument.

#### **Overview**

5. This instrument provides that a person is not entitled to be paid an energy supplement under section 83A of the Act for a day if the person is paid a clean energy bonus for the day under section 209A of the Act or section 62A of the *Veterans' Entitlements Act 1986*.

#### **Consultation**

6. Given this instrument simply remakes the previous instrument and maintains extant policy, consultation on this instrument was limited.

#### **Commencement**

7. This instrument commences on the day after the day it is registered.

## Explanation of provisions

**Section 1** states the name of the instrument.

**Section 2** provides that the instrument commences at the start of the day after the day it is registered on the Federal Register of Legislation. This has the same effect as paragraph 12(1)(a) of the *Legislation Act 2003*.

**Section 3** provides that a person is not entitled to an energy supplement under section 83A of the Act for a particular day if the same person is already entitled to an energy supplement for that particular day under either section 209A of the Act or section 62A of the *Veterans' Entitlements Act 1986* (an ***excluded provision***).

This section is intended to avoid double payment of an energy supplement.

Under this section, it is not relevant whether the person who is entitled to an energy supplement under an excluded provision has actually received the energy supplement. It is the person's entitlement to the energy supplement that is the main relevant consideration here, not the receipt of the payment.

The expression ***energy supplement*** is defined in section 5 of the Act. Because of paragraph 13(1)(b) of the *Legislation Act 2003*, ***energy supplement*** in this instrument has the same meaning as in the Act.

## **Statement of Compatibility with Human Rights**

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

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This legislative instrument 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*.

#### **Human rights implications**

The instrument does engage an applicable right or freedom. It relates to the right to social security. The right to social security is contained in Article 9 of the International Covenant on Economic Social and Cultural Rights (ICESCR). The right to social security requires, among other things, the right to a minimum essential level of benefits for 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.

This compensation is intended to enable people with limited means to continue to have adequate access to essential services and would be in accordance with Australia's social security obligations under the International Covenant on Economic, Social and Cultural Rights.

The UN Committee on Economic Social and Cultural Rights has stated that qualifying conditions for benefits must be reasonable, proportionate and transparent.

The instrument appears to satisfy these criteria. It ensures that a person does not receive double-entitlements when only one entitlement is intended. There is no scope for the exercise of a discretion under the instrument, the conditions are prescriptive.

#### **Conclusion**

The instrument is compatible with human rights because it does not reduce the right to social security but merely ensures the right is exercised appropriately and not used for unintended extra benefits. The conditions the instrument imposes on the entitlement are considered fair and reasonable in the policy context.

Military Rehabilitation and Compensation Commission  
Rule-Maker