Dear Member,

I am writing to advise that the Repatriation Commission has endorsed revised Guidelines on the Special Rate and Intermediate Rate of disability pension under the Veterans’ Entitlements Act 1986 (VEA).

The Guidelines have been revised in response to the Full Federal Court decision in Repatriation Commission v Connell and the Commission’s decision of 2 February 2012 that the court’s interpretation in Connell should also have applicability to Special Rate (and Temporary Special Rate) claims. In addition, the Guidelines include information on Intermediate Rate of pension claim determinations and incorporate individual feedback received from Ex-service Organisation Roundtable (ESORT) and Operational Working Party (OWP) members on the Guidelines last year.

The effect of the Connell decision is a broadening of the interpretation of paragraph 23(1)(c) of the VEA. The Full Federal Court in Connell found that Mr Connell’s reduction in work hours satisfied the criterion of being “prevented from continuing to undertake remunerative work that the veteran was undertaking”.

The new Guidelines reflect the application of the Connell decision in that the requirement of being “prevented from continuing to undertake remunerative work that the veteran was undertaking” must include consideration of any restrictions to the nature and quality of the veteran’s work, for example, reduction in their work hours.

This change in interpretation may mean some individuals are now eligible for Special Rate or Intermediate Rate pensions, when they would not have been prior to the Connell decision. It is important to note that all other eligibility criteria remain unchanged.

Determinations made prior to the Connell decision remain valid as they were based on the interpretation of the ‘prevented test’ at that time. However, any individual who believes they may be eligible for Intermediate Rate or Special Rate pension in light of the Connell decision, are advised to lodge an application for increase with the Department.
The revised Guidelines are titled **CM6882 Special Rate and Intermediate Rate of pension** and replace the existing Special Rate guidelines **CM5011 Special Rate of Pension**. They are available in the Department’s Consolidated Library of Information and Knowledge.

Yours sincerely

[Signature]

Neil Bylles
A/g First Assistant Secretary
Rehabilitation and Support Division

14 June 2013

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