

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 154**

Issued by the Authority of the Minister for Veterans' Affairs

*Australian Participants in British Nuclear Tests (Treatment) Act  
2006*

*Australian Participants in British Nuclear Tests (Treatment)  
Regulations 2007*

Section 50 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 19 of the Act provides, in part, that where an eligible person travels for the purpose of obtaining treatment and satisfies such conditions as are prescribed then the person is entitled to be paid such travelling expenses as are prescribed. Travel expenses are reimbursements of the costs of transport, accommodation and meals incurred by an eligible person (and any attendant) in the course of travelling for treatment of malignant neoplasia or cancerous tumour (including testing for malignant neoplasia/cancerous tumour).

Generally speaking, an eligible person is an Australian serviceman or servicewoman, a Commonwealth employee or a relevant contractor, who, while an Australian resident, was present in a (British) nuclear test area or was involved with contaminated items from such areas or was flying in an aircraft for the purpose of measuring 'nuclear fallout' and that aircraft became contaminated.

The purpose of the Regulations is to set out the conditions an eligible person and any attendant must satisfy in order to be paid travel expenses in respect of travel for treatment, set out the levels of payments that may be made, and provide for associated matters (e.g. indexation of payments).

Details of the Regulations are included in the Attachment.

The Regulations are taken to have commenced on 1 December 2006 to enable stockpiled claims to be met (i.e. claims for travel-expenses lodged on or after the commencement of the Act but before the making of the Regulations). Advice from the Office of Legislative Drafting and Publishing indicates that the Regulations would not offend subsection 12(2) of the *Legislative Instruments Act 2003* because the Regulations would not affect any person's rights so as to disadvantage that person or impose any liability on any person (other than the Commonwealth).

## **Consultation**

None. The Rule-Maker decided that consultation in relation to the instrument was not necessary because the instrument was virtually identical to travel-regulations under the *Veterans' Entitlements Act 1986* (VEA) and recently the National Treatment Monitoring Committee (NATMOC), comprised of representatives of ex service organisations and the Department of Veterans' Affairs (DVA) ie DVA's consultative forum for, among other things, legislative proposals, had been consulted on major aspects of the VEA travel-regulations and it probably would have been pointless and possibly confusing to have consulted NATMOC again on virtually identical issues.

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## ATTACHMENT

### **Details of the *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007***

- regulation 1 sets out the name of the Regulations - *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007*
- regulation 2 provides that the regulations are taken to have commenced on 1 December 2006.
- subregulation 3 sets out definitions used in the Regulations.
- subregulation 4(1) defines “travel expenses” as amounts required to reimburse in whole or part, expenditure on:
- transport
  - accommodation; or
  - meals.

The expenditure must have been “necessarily incurred” by an eligible person and the travel in the course of which the expenditure was incurred must have been for treatment of malignant neoplasia (or testing for malignant neoplasia).

- subregulation 4(2) provides that the amount of travelling expenses payable to an eligible person is not to exceed an amount calculated by the Repatriation Commission (Commission) as the cost of travel by the most appropriate form of transport over the relevant distance.

Subregulation 4(2) is subject to proposed subregulations 4(3) and 4(4) to ensure that, respectively, if the amount calculated by the Commission is more than an eligible person’s expenditure on travel, the amount of travel expense payable is the amount equivalent to the amount of expenditure and not the (greater) amount calculated by the Commission and that in the case of parking fees, the travelling expenses payable is the amount equivalent to the parking fees necessarily incurred and not any amount calculated by the Commission.

- subregulation 4(3) provides that if the expenditure by an eligible person on travel is less than the amount calculated by the Commission then the person’s travel expenses are to be an amount equal to the person’s expenditure.

- subregulation 4(4) enables the parking fees of an eligible person to be paid if the fees were necessarily incurred at or near the place to which the person travelled for treatment.
- subregulation 5(1) provides the criteria by which the Commission is to determine the most appropriate form of transport over the relevant distance.
- subregulation 6(1) sets out the means for calculating “relevant distance” for travel for treatment.

An eligible person will be entitled to travel expenses for travel by the most appropriate form of transport over the relevant distance (subregulation 4(2)).

If an eligible person travels for treatment over a distance of more than 50 kms from his or her residence and the person’s application for travel expenses has been endorsed with a statement by the treatment-provider at the relevant destination that he or she was the closest practical treatment-provider to the person’s residence then the relevant distance for the purpose of working out the travel expenses for transport is the distance from the eligible person’s residence to the treatment-provider.

If, however, an eligible person’s application is not endorsed by the treatment-provider then the relevant distance is a distance determined by the Commission - being a distance that is at least 50 kms from the person’s residence to the closest practical treatment-provider.

The distance travelled is taken to have commenced at 50 kms even though the actual total distance between residence and treatment-provider could be actually less than 50 kms because entitled persons under virtually identical regulations made under the *Veterans’ Entitlements Act 1986* are entitled to the dispensation and it was decided that “parity in benefits” should be maintained for the two groups of beneficiaries.

If an eligible person travels for treatment over a distance not exceeding 50 kms the relevant distance is the distance from the person’s residence to the treatment-location (regardless of whether the treatment-location is the closest practical treatment-location).

- subregulation 6(2) defines "endorsed for treatment" as the situation where:
- an eligible person has travelled for treatment and the person’s treatment-provider at the relevant destination has made an endorsement on the person’s application for travel expenses to the effect that the treatment was treatment for malignant neoplasia and/or testing for malignant neoplasia

and the treatment-location was as close as practical to the eligible persons' residence; and

- the Commission has confirmed that the treatment-location was as close as practical to the eligible person's residence.

If the Commission holds the opinion that an endorsement is incorrect as to the treatment-location being the closest practical treatment-location the Commission may nevertheless confirm that the treatment-location is the closest practical treatment-location because, for example, in the Commission's view it would not be cost-effective for the Commission to calculate the relevant distance under paragraph 6(1)(b); or the Commission could decline to confirm that the treatment-location is the closest practical treatment-location in which case, under paragraph 6(1)(b), the eligible person's application for travel expenses will be regarded as not being "endorsed for treatment".

regulation 7 provides that the cost of transport for travel between two places over the most direct route between the places is:

- for travel by private motor vehicle – 26.7 cents per kilometre and the costs necessarily incurred for tolls.
- for travel by other means – the costs necessarily incurred by the eligible person.

subregulation 8(1) prescribes the amounts to be reimbursed for the costs of accommodation and meals in commercial, subsidised and private accommodation namely:

- for commercial accommodation not in a capital city (e.g. motel, hotel) - \$110.10.
- for commercial accommodation in a capital city - \$130.80.
- for subsidised accommodation (e.g. hostel) - \$68.80.
- for private accommodation (e.g. private home) - \$34.40.

subregulation 8(2) prescribes the amount of \$178.90 to be reimbursed for the costs of commercial accommodation (including meals) for a night where an eligible person shares the accommodation with his or her attendant.

subregulation 8(3) requires proof of expenditure on the relevant accommodation before the costs of accommodation and meals can be reimbursed.

subregulation 8(4) sets out the amounts that are to be reimbursed for the cost of meals during the course of travel on a day on which overnight accommodation is not required, namely:

- where the distance from the eligible person's residence to the relevant destination exceeds 50 km but not 200 km - \$10.90 each day.
- where the distance from the eligible person's residence to the relevant destination exceeds 200 km - \$22.10 each day.

subregulation 9(1) describes the travel expenses payable to an attendant in addition to those payable when the attendant travels with an eligible person. Additional travel expenses are payable for an attendant to return home after accompanying an eligible person to an institution (e.g. hospital) where the eligible person has been admitted for treatment. Travel expenses are also payable for an attendant to return to the institution to accompany the eligible person on their homeward journey after discharge.

subregulation 9(2) provides that the travel expenses payable to an attendant under subregulation 9(1) are based on the same mode of transport as that used to accompany the eligible person and include any applicable amounts for accommodation and meals.

subregulation 9(3) applies to the situation where an attendant stays in commercial, subsidised or private accommodation while the eligible person the attendant accompanies is in hospital or some other institution. In this situation the travelling expenses payable to the attendant are worked out in accordance with subregulation 9(4).

subregulation 9(4) sets out the method of calculating the payment under subregulation 9(3) (known in practice as the 'contributing allowance') for the accommodation costs of an attendant who remains near the hospital or other institution to which the eligible person has been admitted. This payment is the lesser of:

- the actual cost of the attendant's accommodation while the eligible person is in the institution; and
- the transport expenses (excluding accommodation and meal costs) that would have been payable to the attendant if the attendant had returned home and returned to the institution using a private motor vehicle.

Regulation 10 provides for the situation where an eligible person travels to different treatment-locations in the same city or town. In this situation the travel expenses for the journey from the person's residence to the city or town are to be the greatest amount payable under section 19 of the Act and the travel expenses for the journey from one treatment location in the city or town to the next are to be the greatest amount payable under section 19 of the Act.

Regulation 11 requires travel expenses to be increased on 1 July each year in accordance with regulation 12 i.e. indexed.

- Regulation 12 establishes the method for calculating increases for the various travel expenses payable under the Regulations using the 'All Groups Consumer Price Index'.
- Schedule 1 sets out examples showing how travel expenses are to be calculated in typical situations.