

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 102**

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) Amendment  
Regulation 2012 (No. 1)*

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.

The Regulation amends the *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007* (the Principal Regulations) to remove the requirement for treatment practitioners to endorse an entitled person's (Australian participant in British nuclear tests) application for reimbursement of travel expenses.

The endorsement is confirmation that the treatment the person received met the person's health care needs and that the treatment location was as close as practical to the entitled person's residence.

The requirement is being removed in order to facilitate the electronic lodgement of applications for reimbursement of travel expenses.

The Regulation also amends the Principal Regulations to remove the requirement for applicants for reimbursement of travel expenses to produce proof of expenditure on commercial or subsidised accommodation used in the course of the person's travel for treatment.

If the Department of Veterans Affairs (the agency that administers the Principal Regulations) requires proof of expenditure on commercial or subsidised accommodation it will seek that proof by other means.

Details of the Regulation are set out in the Attachment.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

### **Consultation**

No direct consultation with interested parties but the Department of Veterans' Affairs received client-feedback in relation to the proposal to remove the need for treatment practitioner endorsement of travel claims. The Regulation benefits the interested parties in question and it is reasonable to assume they would agree with it. Accordingly no direct consultation was considered necessary.

## **Human rights implications**

The Regulation does engage an applicable right or freedom. It relates to the right to social security. 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.

The Principal Regulations enable entitled persons to be reimbursed their travel expenses where they travel for treatment (principal benefit). The Regulation enhances the principal benefit because it could make treatment more accessible for the category of person in question.

This enhancement of the principal benefit 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 Regulation satisfies these criteria. It would make it easier for entitled persons to claim reimbursement for the cost of travelling for treatment which could make treatment for these categories of people more accessible.

### **Conclusion**

The Regulation is compatible with human rights because it complements the right to social security (health care).

Warren Snowdon  
Minister for Veterans' Affairs  
Rule-Maker

## ATTACHMENT

### Details of the *Australian Participants in British Nuclear Tests (Treatment) Amendment Regulation 2012 (No. 1)*.

#### Section 1 - Name of Regulation

This section provides that the title of the Regulation is the *Australian Participants in British Nuclear Tests (Treatment) Amendment Regulation 2012 (No. 1)*.

#### Section 2 - Commencement

This section provides for the Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

#### Section 3 – Amendment of the Principal Regulations

This section provides that the Principal Regulations are amended by the Schedule to the Regulation.

#### Schedule - Amendments

##### **Item [1] – subregulation 6(1)**

This item is a drafting-type amendment as a result of the revocation of subregulation 6(2).

##### **Item [2] – paragraphs 6(1)(a) and (b)**

This item omitted paragraphs 6(1) (a) and (b) and substituted paragraph 6(1)(a). Former paragraphs 6(1)(a) and (b) contained a superfluous reference to “endorsed for treatment” as treatment practitioners would no longer be required to endorse applications for reimbursement of travel expenses.

The new paragraph applies to travel for treatment where the distance for the travel is more than 50 km. The effect of this amendment, in conjunction with other regulations in the Principal Regulations, would mean that the relevant distance for travel (in respect of which travel expenses are reimbursable) is, if the distance from the residence of the entitled person to a treatment location is more than 50 km, the greater of:

- the distance determined by the Repatriation Commission to be the distance between the eligible person’s residence and the closest practical treatment location; and
- 50 km.

##### **Item [3] – paragraph 6(1)(c)**

This item is a drafting-type amendment as a result of the revocation of paragraph 6(1)(a).

**Item [4] – subregulation 6(2)**

This item omitted subregulation 6(2). Subregulation 6(2) defined “endorsed for treatment” for the purposes of subregulation 6(1) but because treatment practitioners are no longer required to endorse applications for reimbursement of travel expenses, the definition is not required.

**Item [5] – subregulation 8(1)**

This item is a drafting-type amendment as a result of the revocation of subregulation 8(3) by Item [6].

**Item [6] – subregulation 8 (3)**

This item omitted subregulation 8(3). Subregulation 8(3) required an eligible person to produce evidence of expenditure on commercial or subsidised accommodation if the person’s accommodation costs were to be reimbursed.

**Item [7] – subregulation 8(4)**

This item is a drafting-type amendment as a result of the revocation of subregulation 8(3) by Item [6].

**Item [8] – Further amendments**

This item is a drafting-type amendment as a result of the revocation of subregulation 8(3) by Item [6] and the renumbering of subregulation 8(4) as 8(3) by Item [7].