

EXPLANATORY STATEMENT

Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2017

EMPOWERING PROVISIONS

Section 18 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

PURPOSE

The attached instrument modifies the *Repatriation Pharmaceutical Benefits Scheme*.

The *Repatriation Pharmaceutical Benefits Scheme* (RPBS) provides a wide range of pharmaceuticals and dressings at a concessional rate for the treatment of eligible persons.

The RPBS allows eligible persons access to all items listed in the Schedule of Pharmaceutical Benefits (SPB) available to the general community under the Pharmaceutical Benefits Scheme (PBS), and also an additional list contained in the Repatriation Schedule of Pharmaceutical Benefits (RSPB) which is available only to veterans.

Eligible persons simply show their pharmacist their Gold Card to receive medicines at the concessional patient contribution rate. Under this scheme, an eligible person pays a patient contribution charge (co-payment) for each prescription. This is adjusted at the beginning of each year in line with inflation. The maximum co-payment for 2017 is \$6.30 per prescription, until a person's combined family total reaches the Safety Net Limit/Threshold under the Safety Net Scheme.

The Safety Net Scheme is designed to protect a person if they require a large number of RPBS items. It ensures that a person does not pay concessional co-payments for more than the Safety Net Threshold in a calendar year, after which the prescriptions are free. The scheme is available to all Australians including DVA card holders and their families.

The Safety Net Limit/Threshold is the total amount of money a person and their dependent family members pay for RPBS prescriptions and hospital medicines in a calendar year. The concessional Safety Net Limit for 2017 is \$378.00. After a person reaches this limit, their medicines are free for the rest of the calendar year.

Under the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)*, eligible persons could access pharmaceuticals and dressings at a concessional rate, but only insofar as it was necessary for the treatment of their malignant neoplasia.

The *Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2017* amended the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to provide people already covered under that Act (British Nuclear Test Participants), as well as Australian veterans of the British Commonwealth Occupation Force and civilians present at a British nuclear test area during a relevant period with treatment for all conditions.

Therefore, it is necessary to repeal the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)* and re-make it to ensure that eligible persons are able to access the full range of pharmaceuticals and dressings available under the RPBS Schedule at a concessional rate, not just those necessary for the treatment of their malignant neoplasia.

All changes impact beneficially on eligible persons as they will be able to access a wider range of pharmaceuticals and dressings at a concessional rate.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument that any consultation the rule-maker considered appropriate and reasonably practicable, has been undertaken.

The revocation and re-make of the *Scheme* gives effect to a Government decision to provide people already covered under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* (British Nuclear Test Participants), as well as Australian veterans of the British Commonwealth Occupation Force and civilians present at a British nuclear test area during a relevant period with treatment for all conditions.

The Ex-Service Organisation Round Table, which comprises the National Presidents of 14 Ex-Service Organisations was advised about the nature of this Budget measure on 9 May 2017. In addition, consultation was undertaken within the Department of Veterans' Affairs across the Rehabilitation and Support, and the Health and Community Services, Divisions.

Consultation was by way of phone calls, email correspondence and meetings.

External stakeholders will be notified of the changes in accordance with a communication plan to be implemented prior to the commencement date. This will include promulgating information to indigenous communities by engaging with the existing Indigenous networks including indigenous medical networks, the Department of the Prime Minister & Cabinet indigenous affairs unit and through indigenous liaison officers across the Australian Public Service.

The changes are beneficial in nature in terms of their impact on clients.

In these circumstances, it is considered that the requirements of section 17 of the *Legislation Act 2003* have been fulfilled.

RETROSPECTIVITY

No.

REGULATORY IMPACT

None.

HUMAN RIGHTS STATEMENT

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

The attached instrument engages the following human rights:

- the right to health as recognised in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and
- the right to health as recognised in Article 25 of the Convention on the Rights of Persons with Disabilities (CRPD);

The right to health is contained in article 12 of the ICESCR and refers to “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Article 25 of the CRPD recognises that persons with disabilities have rights to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.

Overview

The instrument provides for access to the full range of pharmaceuticals and dressings available under the RPBS Schedule at a concessional rate, not just those necessary for the treatment of malignant neoplasia.

Conclusion

The attached legislative instrument promotes the health and rehabilitation of DVA clients by enabling a greater range of people to access more extensive treatment for all conditions and diseases, not just malignant neoplasia. In addition to those persons already eligible for treatment for malignant neoplasia under the existing *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, civilians present at a nuclear test area during a relevant period and Australian veterans of the British Commonwealth Occupation Force will be eligible to access treatment for any condition. Accordingly, the instrument is considered to be compatible with human rights.

Dan Tehan
Minister for Veterans' Affairs
Rule-Maker

FURTHER EXPLANATION OF PROVISIONS

See [Attachment A](#).

Attachment A**FURTHER EXPLANATION OF PROVISIONS****Section 1**

This section sets out the name of the instrument - the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2017*.

Section 2

This section provides that the instrument commences on 1 July 2017.

Section 3

This section sets out the legislative authority for the modifications to the Repatriation Pharmaceutical Benefits Scheme.

Section 4

This is the operative provision of the instrument. It provides that the modifications to the Repatriation Pharmaceutical Benefits Scheme, as outlined in Schedule 1, have effect.

Section 5

This section provides that instruments specified in Schedule 2 are repealed as set out. Schedule 2 repeals the entire *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006*.

Schedule 1 – Modifications of the *Repatriation Pharmaceutical Benefits Scheme*

Item 1 states that the instrument is the *Scheme*. *Scheme* is given a new definition at **Item 8** and means the *Repatriation Pharmaceutical Benefits Scheme* as modified by the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2017*.

Item 1 also provides that the *Scheme* is authorised by section 18 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 1 notes that the purpose of the *Scheme* is to enable *Community Pharmacists* to supply *Pharmaceutical benefits* to *Eligible Persons*. This means that eligible persons are able to access pharmaceuticals and dressings available under the RPBS Schedule at a concessional rate. This is the same purpose as existed under the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)*, but is stated more succinctly, using the definition of *Eligible Persons*.

Item 1 includes a transitional provision and provides that anything commenced under the existing instrument that is not completed by 1 July 2017 (the commencement date of this *Scheme*) may be completed under this *Scheme* as if it had been started under this *Scheme*.

Item 2 substitutes the definition of *Act* from the existing *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*. This is necessary because the title of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* was changed by the *Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2017*.

Item 3 omits the definition of *accepted disability* from the *Scheme*. As the Act provides an *Eligible Person* with full non-liability health care, it is not appropriate to refer to a liability based definition.

Eligible Persons generally will not have such an injury, disease or disability by virtue of having been an Australian participant of the British Nuclear Tests, Australian veteran of the British Commonwealth Occupation Force or a civilian present at a British nuclear test area during a relevant period. They may, however, have such an injury, disease or disability from service in a conflict.

Item 4 substitutes a definition of *Eligible Person* under the *Scheme*. Under the existing *Scheme*, a person was an eligible person if they held a *Repatriation Health Card – For Specific Conditions* (White Card) and were eligible for treatment for malignant neoplasia under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

Now that treatment for eligible persons under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* has been expanded to treatment for all conditions and diseases, it is no longer necessary to limit the definition of *Eligible Person* under the *Scheme* to either a White Card or treatment for malignant neoplasia.

Item 5 omits the following definitions:

- *income support payment*
- *income support payment under the Social Security Act 1991*
- *MRCA supplement*
- *pension supplement*
- *pharmaceutical allowance, and*
- *pharmaceutical reimbursement.*

This is consistent with the existing scheme. These definitions are not required because they all relate to Part 5A of the *Repatriation Pharmaceutical Benefits Scheme*, which is not applicable to *Eligible Persons* under this *Scheme*.

Item 6 inserts a definition of *Repatriation Health Card – For All Conditions* (Gold Card) into the *Scheme*. Previously, this definition was not required because eligible persons only received a *Repatriation Health Card – For Specific Conditions*.

The definition provides that a *Repatriation Health Card – For All Conditions* means an identification card, or written authorisation, provided to an *Eligible Person* in relation to treatment for all injuries or diseases.

The definition is slightly different to the definition under the *Repatriation Pharmaceutical Benefits Scheme*, because that scheme refers to a person being eligible for treatment under either sections 85 or 86 of the *Veterans' Entitlements Act 1986*. The definition for the *Scheme* links back to eligible persons under section 7 of

the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 7 omits the following definitions:

- *Repatriation Health Card – For Specific Conditions*
- *Repatriation Pharmaceutical Benefits Card*
- *revoked scheme*, and
- *RPBS*.

A definition of *Repatriation Health Card – For Specific Conditions* is no longer required as eligible persons under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* will be issued with a *Repatriation Health Card – For All Conditions* from 1 July 2017.

The *Repatriation Pharmaceutical Benefits Card* (Orange Card) is not required under the *Scheme* because *Eligible Persons* will be entitled to a *Repatriation Health Card – For All Conditions* (Gold Card.) A Gold Card holder can use their card to access treatment for all conditions, including pharmaceuticals. An Orange Card enables a person to access concessional pharmaceuticals only.

The definition of “revoked scheme” is no longer required because the *Scheme* does not use this term.

The definition of *RPBS* is not required because it has the same meaning as the definition of the *Scheme*. Having two terms with the same definition could be confusing, hence the *RPBS* definition is being omitted.

Item 8 substitutes a definition of *Scheme*. This is necessary because under the *Repatriation Pharmaceutical Benefits Scheme*, “*Scheme*” means the *Repatriation Pharmaceutical Benefits Scheme*.

“*Scheme*” under this instrument means the *Repatriation Pharmaceutical Benefits Scheme* as modified by the *Australian Participant in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Repatriation Pharmaceutical Benefits Scheme) Instrument 2017*.

Item 9 omits the definitions of *social security pension supplement* and *SRCA disability*.

The definition of *social security pension supplement* is not relevant under the *Scheme* because Part 5A, where the term appears, is not applicable under this instrument.

The definition of *SRCA disability* is not relevant under the *Scheme* because it is used within the definitions of “accepted disability” and “war-caused or defence-caused injuries or diseases”, both of which are omitted from this instrument.

Item 10 substitutes a definition of *Treatment Principles*. This is necessary because under the *Repatriation Pharmaceutical Benefits Scheme*, “*Treatment Principles*” means the written document prepared by the Repatriation Commission, approved by the Minister under section 90 of the *Veterans’ Entitlements Act 1986*. *Treatment Principles* for the purposes of this instrument, however, is a reference to the *Treatment Principles* as modified by the *Australian Participants in British Nuclear*

Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Treatment Principles) Instrument 2013.

Item 11 omits the definitions of:

- *veterans supplement*
- *war widow/war widower pension*, and
- *war-caused or defence caused injuries or diseases.*

The definition of “veterans supplement” is not required under the *Scheme* because that is only payable to certain people under paragraph 118A(1)(c) the *Veterans’ Entitlements Act 1986*. Under section 23B of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*, eligible persons will be entitled to pharmaceutical supplement instead.

The definitions of “war widow/war widower pension” and “war-caused or defence-caused injuries or diseases” are not required under the *Scheme* because they only appear in sections of the *Repatriation Pharmaceutical Benefits Scheme* that are omitted for this *Scheme*.

Item 12 omits the words, “the RPBS” (wherever occurring) in the Note to section 16 and substitutes them with the words, “the *Scheme*.” This is consequential to the change made by **Item 7** where the RPBS definition was omitted. As noted above, the *RPBS* definition was duplicative of the definition of *Scheme*.

Item 13 omits the words, “the Act” in subsection 16A(9) and substitutes them with “the *National Health Act 1953*.” Under the *Repatriation Pharmaceutical Benefits Scheme*, “the Act” means the *Veterans’ Entitlements Act 1986*. However, the reference should be to the *National Health Act 1953* instead.

Item 14 omits the words, “*RPBS* listed” in section 17 and substitutes them with the words, “*RPBS Schedule* listed.” This is necessary because drugs are listed in the *RPBS Schedule* to the *Repatriation Pharmaceutical Benefits Scheme*, not in the actual *Repatriation Pharmaceutical Benefits Scheme*.

Item 15 omits the words “, a *Repatriation Health Card – For Specific Conditions* or a *Repatriation Pharmaceutical Benefits Card*,” from paragraph 18(a). The section 18 substitution under the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)* omitted the references to “*Repatriation Health Card – For All Conditions*” and “*Repatriation Pharmaceutical Benefits Card*.”

With the changes made by the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* that expanded the treatment available to eligible persons, it is now appropriate to modify paragraph 18(a) so that it refers to a *Repatriation Health Card – For All Conditions* (Gold Card) rather than a *Repatriation Health Card – For Specific Conditions* (White Card.) Consistent with existing policy, *Eligible Persons* under this instrument will not receive a *Repatriation Pharmaceutical Benefits Card*.

Item 16 makes the same changes as **Item 15**, but with respect to paragraph 18(b).

Item 18 omits Note 2 after section 21, consistent with the omission under the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British*

Nuclear Tests) 2006 (No. R45/2013.) This Note is not relevant for this *Scheme* because it relates to the reimbursement of co-payments not covered by other types of amounts or supplements under Part 5A, which is not applicable to *Eligible Persons*.

Item 17 is a consequential change that flows from **Item 18**. Because Note 2 is omitted, there is no longer a need to refer to “Note 1.” Instead, Note 1 will now read, “Note.”

Items 19 – 25 modify the operation of section 23, which relates to expenses incurred in obtaining Pharmaceutical Benefits while not in receipt of a pharmaceutical supplement. Section 23 of the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)* enables the Repatriation Commission to reimburse a person’s pharmaceutical expenses under certain circumstances, up to the amount that the person would have been entitled to receive, had they received the pharmaceutical allowance.

This instrument makes some necessary modifications to that provision, to ensure that it will work in the context of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 19 modifies the heading to section 23. The words, “pharmaceutical supplement” at the end of the heading are replaced with “pharmaceutical allowance.” This is necessary because pharmaceutical supplement is only payable to certain people under paragraph 118A(1)(c) the *Veterans’ Entitlements Act 1986*. Under section 23B of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*, eligible persons will be entitled to pharmaceutical supplement instead.

Item 20 modifies subsection 23(1) to omit the words, “allowance under paragraph 118A(1)(c) of the *Veterans’ Entitlements Act 1986*,” and substitutes the words, “supplement under section 23B of the Act.” As outlined above, eligible persons will be entitled to a pharmaceutical supplement under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 21 modifies paragraph 23(1)(a) to omit the word, “allowance,” and substitute the word, “supplement.” Again, this reflects the fact that eligible persons under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* will be entitled to a pharmaceutical supplement, rather than the pharmaceutical allowance under the *Veterans’ Entitlements Act 1986*.

Item 22 omits the words, “and after 30 June 1992.” While this date was necessary when section 23 was inserted into the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006*, it is not required for the *Scheme* because the *Scheme* is being made in 2017 and the information will necessarily have been obtained after 30 June 1992 – the words are obsolete.

Item 23 modifies paragraph 23(1)(c) to omit the word, “allowance,” and substitute the word, “supplement.” As noted above, this reflects the fact that eligible persons under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006* will be entitled to a pharmaceutical

supplement, rather than the pharmaceutical allowance under the *Veterans' Entitlements Act 1986*.

Item 24 modifies subsection 23(1) to omit the words, “of pharmaceutical allowance,” and substitutes the words, “of pharmaceutical supplement.” As outlined above, eligible persons will be entitled to a pharmaceutical supplement under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 25 modifies subsection 23(1) to omit the words, “of the allowance,” and substitutes the words, “of the supplement.” Eligible persons will be entitled to a pharmaceutical supplement under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 26 omits all of Part 5A, which relates to Pharmaceutical Reimbursement. This omission is consistent with the omission under the *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013)*. Part 5A is not applicable to *Eligible Persons* because there are some services that specifically limited to “veterans” and only in specific circumstances.

Access to the Veterans' Pharmaceutical Reimbursement Scheme requires a person to have war or war-like service and a minimum level of disability pension under the *Veterans' Entitlements Act 1986*, or incapacity under the *Military Rehabilitation and Compensation Act 2004*, to be eligible. *Eligible Persons* must satisfy the requirements in these other Acts to be eligible and will not be entitled by virtue of their eligibility under the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Schedule 2 – Repeals

Item 1 repeals the entire *Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006*.