

EXPLANATORY STATEMENT

Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006
Human Services (Medicare) Act 1973
Sex Discrimination Act 1984

Veterans' Affairs Legislation Amendment (British Commonwealth Occupation Force) Regulations 2017

The *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017* (the Budget Measures Act), amongst other matters, amended the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to provide medical treatment for all conditions (via the issue of a "Gold Card") to persons eligible under that Act and expanded eligibility under the Act to include Australian veterans of the British Commonwealth Occupation Force.

As a result of those changes, the Budget Measures Act also amended the short title of the *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*.

The following provisions of various Acts provides that the Governor-General may make regulations prescribing all matters which are by those Acts required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to those Acts:

- Section 50 of the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;
- Section 44 of the *Human Services (Medicare) Act 1973*; and
- Section 116 of the *Sex Discrimination Act 1984*.

(collectively referred to as "the Acts").

The primary purpose of the *Veterans' Affairs Legislation Amendment (British Commonwealth Occupation Force) Regulations 2017* (the Regulations) is to update the existing references from, the *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* in the following Regulations:

- *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007*;
- *Human Services (Medicare) Regulations 2017*; and
- *Sex Discrimination Regulations 1984*

(collectively referred to as the "various Regulations").

In addition, the Regulations make a further consequential change to the *Sex Discrimination Regulations 1984* to update the title of an instrument (the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Treatment Principles) Instrument 2013*) that was also changed to reflect the extension of treatment to Australian veterans of the British Commonwealth Occupation Force.

The Acts specify no conditions that need to be satisfied before the power to make the Regulations may be exercised.

Details of the Regulations are set out in the Attachment.

The authority to amend the various Regulations is found in subsection 33(3) of the *Acts Interpretation Act 1901* which provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

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

The Department of Veterans' Affairs consulted with the Attorney-General's Department and the Department of Human Services on the amendments in the attached instrument.

The result of the consultation was that each of these Departments agreed with the proposed changes to their relevant Regulations.

Consultation was by way of email correspondence.

Consultation with the veteran community was considered unnecessary as the amendments to the various Regulations are of a minor machinery nature and do not alter existing arrangements.

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

Retrospectivity

None.

Documents Incorporated-by-Reference

No.

Regulatory Impact

None.

Human Rights Statement

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

The attached legislative instrument does not engage an applicable right or freedom.

The instrument makes a number of technical consequential amendments to the various Regulations. It updates the name of the new Act and an instrument as a result of amendments made by the *Veterans' Affairs Legislation Amendment (Budget Measures) Act 2017*.

Conclusion

The attached legislative instrument does not engage a human right and therefore is compatible with human rights.

Dan Tehan
Minister for Veterans' Affairs

Rule-Maker

Details of the *Veterans' Affairs Legislation Amendment (British Commonwealth Occupation Force) Regulations 2017*

Section 1 – Name

This section provides that the name of the Regulations is the *Veterans' Affairs Legislation Amendment (British Commonwealth Occupation Force) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the *Veterans' Affairs Legislation Amendment (British Commonwealth Occupation Force) Regulations 2017* are made under the:

- *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*
- *Human Services (Medicare) Act 1973*
- *Sex Discrimination Act 1984*

Section 4 – Schedules

This section provides that the amendments to the various Regulations, outlined in Schedule 1 to the proposed Regulations, have effect.

Schedule 1 – Amendments

Items 1 and 2

Items 1 and 2 amend the *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007*.

Item 1 amends Regulation 1, which sets out the name of the Regulations, to update the name of the Regulations.

This is as a result of the change in the name of the Regulations from the *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007* to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Regulations 2007*.

Item 2 amends Regulation 3 (definitions provision) of the *Australian Participants in British Nuclear Tests (Treatment) Regulations 2007* to update the definition of “Act” referred to in Regulation 3 to refer to the new name of the Act, the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

This is as a result of the change in the name of the *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*.

Items 3 and 4

Items 3 and 4 amend the *Human Services (Medicare) Regulations 2017*.

Item 3 amends subsection 28(2) of the *Human Services (Medicare) Regulations 2017*.

Section 28 deals with the functions of the Chief Executive Medicare relating to the provision of pharmaceutical benefits.

Subsection 28(2) provides that it is a function of the Chief Executive Medicare to process claims for payments and make payments of those claims on behalf of the Repatriation Commission concerning the provision of pharmaceutical benefits under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* and the *Veterans' Entitlements Act 1986*.

Item 3 updates the reference in subsection 28(2) to the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to refer to the new name of the Act, the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 4 amends paragraph 31(2)(a) of the *Human Services (Medicare) Regulations 2017*.

Section 31 deals with claims for treatment provided under certain legislation.

Paragraph 31(2)(a) specifies the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* as an Act to enable the Chief Executive Medicare to process claims for payments and make payments for those claims on behalf of the Repatriation Commission in relation to the provision of treatment.

Item 4 updates the reference in paragraph 31(2)(a) to the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* to refer to the new name of the Act, the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.

Item 5

Item 5 repeals and substitutes a new paragraph 4(3)(b) in the *Sex Discrimination Regulations 1984*.

Regulation 4 of the *Sex Discrimination Regulations 1984* deals with care or services that are Commonwealth-funded aged care

Subregulation 4(3) of the *Sex Discrimination Regulations 2004* specifies that aged care or services (or similar care or services) that are provided under various instruments listed, and in relation to which the Commonwealth has made, or is to make, payments to the provider of the care or services, are Commonwealth-funded aged care services for the purposes of the *Sex Discrimination Act 1984*.

Amongst other instruments, subregulation 4(3) prescribes aged care or services that are provided under the *Treatment Principles* as modified by the *Treatment Principles (Australian Participants in British Nuclear Tests) 2006* made under section 16 of the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*.

Item 5 updates the reference of the name of the instrument in paragraph 4(3)(b) to the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) (Modifications of the Treatment Principles) Instrument 2013*, to reflect the new name of the instrument. Item 5 also updates the reference to the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* in the paragraph to refer to the new name of the Act, the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*.